OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

Elizabeth Molnar

Sub. H.B. 145*

132nd General Assembly
(As Reported by S. Health, Human Services and Medicaid)

Reps. Huffman and Sprague, Seitz, Blessing, Butler, Clyde, Faber, Anielski, Antonio, Ashford, Barnes, Boyd, Carfagna, Craig, Cupp, Duffey, Fedor, Galonski, Ginter, Green, Greenspan, Hambley, Holmes, Johnson, Kent, Leland, Lepore-Hagan, Manning, O'Brien, Patterson, Patton, Pelanda, Reineke, Roegner, Rogers, Ryan, Sheehy, Stein, Strahorn, Sweeney, Sykes, West, Wiggam

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 that impairment.
- Requires suspected practitioner impairment to be reported to the monitoring organization under contract with the Board to conduct the One-Bite program, rather than the Board as under existing law.
- Increases to $130 (from $75) the application fee for a physician or podiatrist training certificate.
- Makes changes to the law under which dietitians and respiratory care professionals were placed under the regulation of the State Medical Board, including changes related to fees, other licensing procedures, and Board discipline.
- Provides, with an exception, that the General Assembly's authorization through the enactment of legislation is needed before home and community-based waiver services or nursing facility services are included in Medicaid managed care.

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

- 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 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:

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[1] R.C. 4731.251.

[2] R.C. 4731.251(B).

[3] R.C. 4730.32(B), 4731.224(B), 4759.13, 4760.16(B), 4761.19, 4762.16(B), 4774.16(B), and 4778.17.

[4] R.C. 4731.22(B)(26) and 4731.25.

(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;

(7) Massage and cosmetic therapists;

(8) Naprapaths and mechanotherapists;

(9) Dietitians;

(10) Respiratory care professionals.[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:

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[5] R.C. 4731.251(A).

[6] *See e.g.*, R.C. 4731.22(B)(26).

[7] R.C. 4731.252(A).

(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]

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.

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[8] R.C. 4731.251(B).

[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)).

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 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]

[11] R.C. 4731.251(E)(1).

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]

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.

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[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, 4759.13, 4760.16, 4761.19, 4762.16, 4774.16, and 4778.17.

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]

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:

[16] R.C. 4731.251(D).

[17] R.C. 4731.252.

[18] R.C. 4731.252(B).

(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] It also creates a reporting requirement in the case of dietitians and respiratory care professionals, who are now under the Board's jurisdiction.[20]

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 determines that the practitioner is not eligible for One-Bite, the bill requires the organization to report the practitioner to the Board.[21]

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.[22]

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.[23]

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

[20] R.C. 4759.13 and 4761.19.

[21] R.C. 4731.251(C).

[22] R.C. 4730.32(B)(1), 4731.224(B), 4760.16(B)(1), 4762.16(B)(1), and 4774.16(B)(1).

[23] R.C. 4730.32(B)(2), 4731.224(B)(2), 4759.13, 4760.16(B)(2), 4761.19, 4762.16(B)(2), 4774.16(B)(2), and 4778.17.

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.[24]

PODIATRIST TRAINING CERTIFICATES

In order to pursue an internship, residency, or clinical fellowship program in Ohio, a physician or podiatrist who is not licensed to practice in Ohio must apply to the Board for a training certificate.[25] The bill increases to $130 (from $75) the application fee.

In the case of a training certificate issued to a physician, it is valid under current law only for three years. At present, the Board may renew a physician training certificate for an additional two-year period if the holder applies for renewal. With respect to a podiatrist training certificate, under existing law, it is valid only for one year, but may be renewed annually, on application to the Board, for a maximum of five years. The bill instead specifies that an initial podiatrist training certificate is valid for a three-year period, just like a physician training certificate. It also permits each type of certificate to be renewed for one additional three-year period and increases the renewal fee for each to $100 (from $35).

REGULATION OF DIETITIANS AND RESPIRATORY CARE PROFESSIONALS

Beginning January 21, 2018, dietitians and respiratory care professionals are regulated by the State Medical Board, as Am. Sub. H.B. 49, the main operating budget from the 132nd General Assembly, abolished both the Ohio Board of Dietetics and Ohio Respiratory Care Board and placed their duties in the State Medical Board.

Advisory councils

H.B. 49 established the Dietetics Advisory Council and Respiratory Care Advisory Council, each responsible for advising the Medical Board on issues relating to the practice of dietetics and respiratory care, respectively. The bill makes changes related to the compensation and duties of each council, as well as to the membership of the Respiratory Advisory Council.[26]

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[24] R.C. 4731.25.

[25] R.C. 4731.291 and 4731.573.

[26] R.C. 4759.051 and 4761.032.

Membership

The bill specifies that two members of the Respiratory Advisory Council must be physicians, one a member of the Medical Board and one with clinical training and experience in pulmonary disease. It authorizes the Ohio State Medical Association to nominate not more than three individuals for consideration by the Board when appointing the physician member with pulmonary training and experience. The bill also allows the Ohio Society for Respiratory Care to nominate not more than three individuals for the Board to consider when appointing council members other than the required physician members.

Compensation

The bill eliminates provisions allowing members of each council to receive per diem compensation and, instead, specifies that members serve without compensation. The member, however, must be reimbursed for actual and necessary expenses incurred in performing official duties.

Duties

With respect to the Dietetics Advisory Council, the bill eliminates its authority to advise the Medical Board on the investigation of complaints regarding the practice of dietetics. It also authorizes, rather than requires as under current law, the Council to submit to the Medical Board recommendations on matters related to the regulation and practice of dietetics.

In the case of the Respiratory Care Advisory Council, the bill requires it to meet at least four times a year and at such other times as may be necessary to fulfill its duties. It also authorizes the Council to submit to the Board recommendations on issues related to the regulation and practice of respiratory care.

Medical board regulatory procedures

The bill makes several changes to the laws related to the licensure of dietitians and respiratory care professionals, in order to align regulatory and disciplinary procedures applicable to these professionals with those governing other professionals already subject to Medical Board oversight.[27] The changes are described below.

[27] Professionals currently regulated by the State Medical Board include physicians, podiatrists, physician assistants, massage and cosmetic therapists, anesthesiologist assistants, acupuncturists, Oriental medicine practitioners, radiologist assistants, and genetic counselors.

Fees

In the case of dietitians, the bill increases to $225 (from $125) the application fee for an initial license. It raises to $180 (from $95) the license renewal fee, but also establishes a biennial, rather than annual, renewal cycle. The bill maintains the $65 fee for the issuance or renewal of a limited permit, but increases to $35 (from $20) the fee for a duplicate license or limited permit. It establishes a $50 license verification fee and eliminates the authority of the Board to establish fees in excess of the amounts provided in statute or to waive fees under certain circumstances.[28] The bill also eliminates the $180 fee to reinstate a lapsed, revoked, or suspended license to practice dietetics and instead establishes a process for the reinstatement or restoration of a license suspended for failure to renew (see "**Failure to renew**," below). In addition, it eliminates the $125 fee to reactivate an inactive license.

With respect to respiratory care professionals, the bill establishes in statute the following fees: $75 for an initial license, $20 for a limited permit, and $10 to renew a limited permit. Under existing law, the Board may set these same fees up to those dollar amounts. The bill eliminates the authority of the Board to adjust fees biennially within current law limits and to waive all or part of a license fee when the license is issued less than 18 months before its expiration date. It also lowers to $75 (from $100) the biennial license renewal fee and establishes a license verification fee of $50 as well as a duplicate license or limited permit fee of $35.[29] After the third renewal of a limited permit, a permit holder must pay a $35 renewal fee. Under current law, the fee is set at $50.

Limited permits

The bill standardizes procedures for issuing and renewing limited permits under the Dietetics Law and Respiratory Care Law.[30] It requires that an application for a limited permit be made on a form furnished by the Board and accompanied by the limited permit application fee. The Board must issue the permit if the applicant meets educational requirements for licensure and has not violated any of the grounds for Board discipline. The Board must also maintain a register of all persons holding limited permits. In the case of a dietitian, a limited permit expires and may be renewed in accordance with rules adopted by the Board. For a respiratory care professional, a limited permit generally expires and must be renewed annually. The bill specifies that the Board may revoke a limited permit on satisfactory proof that the permit holder has

[28] R.C. 4759.08.

[29] R.C. 4761.07.

[30] R.C. 4759.06, 4761.05, and 4761.06.

engaged in practice outside the scope of the permit or in unethical conduct or has violated any of the grounds for Board discipline.

Out-of-state practitioners

With respect to the practice of dietetics or respiratory care by individuals who are not residents of Ohio or who are licensed to practice in another state, the bill does the following:

- Eliminates the authority of a dietitian who is licensed in another state or is registered by the Commission on Dietetic Registration but not licensed to practice in Ohio to practice in this state for not more than 15 days without being subject to the prohibition against the unlicensed practice of dietetics;[31]

- Eliminates the authority of a nonresident to practice respiratory care in Ohio for not more than 30 days if the services are supervised by a licensed respiratory care professional, the nonresident registers with the Board, and either qualifies for Board licensure or holds a valid license issued by another state;[32]

- Eliminates the authority of the Board to waive the requirement that an applicant for licensure as a respiratory care professional complete an educational program and pass an examination if the applicant is already licensed to practice in another state.[33]

Respiratory care – practice exemptions

The bill eliminates provisions that generally exempt the following from the Respiratory Care Law: (1) an individual who provides respiratory care only to relatives or in medical emergencies, (2) an individual who provides gratuitous care to friends or personal family members, (3) an individual who provides only self-care, (4) an individual who qualifies for licensure, except for having passed the required examination, and (5) an individual who holds a current, valid license issued by another state that has licensure requirements considered by the Board to be comparable to those of Ohio.[34]

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[31] R.C. 4759.02.

[32] R.C. 4761.11.

[33] R.C. 4761.04.

[34] R.C. 4761.11.

With respect to the exemption currently available to a person employed as a certified hyperbaric technologist, the bill eliminates the requirement that the person file with the Board a copy of the person's certification and pay to the Board a fee. It also eliminates the filing fee that must be paid to the Board for accepting and storing hyperbaric technologist certifications.[35]

License issuance or renewal

The bill makes several changes to the law governing the issuance and renewal of a license to practice as a dietitian or respiratory care professional, including the following:

- Eliminates the requirement that an applicant for a license to practice dietetics be a resident of Ohio or perform or plan to perform dietetic services in Ohio;[36]

- Eliminates the requirement that the Board administer the license examination for respiratory care professionals and, instead, requires the Board to adopt rules to approve a licensing examination administered by a national organization;[37]

- Eliminates the ability of a dietitian to place a license in inactive status and, instead, requires any dietitian or respiratory care professional with an inactive license on January 21, 2018 to have the license placed in active status by June 30, 2018;[38]

- Requires a dietetics license to be renewed biennially – beginning July 1, 2018 – rather than annually as under current law;[39]

- Eliminates provisions that permit a dietitian or respiratory care professional to apply for reinstatement one year after certain license sanctions;[40]

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[35] R.C. 4761.07.

[36] R.C. 4759.06.

[37] R.C. 4761.03.

[38] R.C. 4759.06, Section 3, and Section 4. *See also* R.C. 4759.02 and 4759.05.

[39] R.C. 4759.06.

[40] R.C. 4759.07 and 4761.09.

- Eliminates the authority of the Board to waive continuing education requirements for license renewal and, instead, provides for pro rata reductions of the number of continuing education hours to be completed;[41]

- Specifies that a person licensed to practice dietetics by the former Ohio Board of Dietetics or to practice as a respiratory care professional by the former Ohio Respiratory Care Board may continue to practice under that license if the person continues to meet the requirements to renew a license and later renews the license with the Medical Board.[42]

Failure to renew – license reinstatement and restoration

Under the bill, a license to practice as a dietitian or respiratory care professional that is not renewed on or before its expiration date is automatically suspended on the expiration date. This is also the case for practitioners issued licenses or certificates by the Board under existing law.[43]

If a license has been suspended for two years or less, it may be reinstated. The Board must reinstate the license on the submission of a renewal application and payment of a reinstatement fee ($205 for dietitians and $100 for respiratory care professionals). The bill eliminates the fee for processing a late renewal, which under current law is equal to 50% of the $95 renewal fee (dietitians) or cannot exceed 50% of the $100 renewal fee (respiratory care professionals).[44]

If a license has been suspended for more than two years, it may be restored. The Board may restore the license on the submission of a restoration application, completion of a criminal records check, and payment of a restoration fee ($230 for dietitians and $125 for respiratory care professionals). However, the Board cannot restore a license unless it decides that the results of the criminal records check do not make the applicant ineligible for licensure. In addition, the Board may impose terms and conditions on the applicant, including requiring the applicant to pass an examination to determine the applicant's fitness to resume practice, requiring the applicant to obtain additional training and pass an examination on the training's completion, and restricting or limiting the extent, scope, or type of practice.[45]

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[41] R.C. 4759.05 and 4761.03.

[42] R.C. 4759.051 and 4761.04.

[43] *See e.g.,* R.C. 4731.15 and 4731.281.

[44] R.C. 4759.08 and 4761.07.

[45] R.C. 4759.062 and 4761.06.

Investigations and discipline

The bill establishes procedures for the investigation of alleged violations of the Dietetics Law and Respiratory Care Law.[46] These procedures correspond to those governing Board investigations of alleged violations by practitioners already subject to Board oversight[47] and involve all of the following:

- Authorizing the Board to question witnesses, conduct interviews, administer oaths, order the taking of depositions, issue subpoenas, and compel the attendance of witnesses and the production of documents;

- Conducting investigations in a manner that protects the confidentiality of patients and persons who file complaints with the Board;

- Sharing information received during an investigation with law enforcement agencies, other licensing boards, and other governmental agencies prosecuting or investigating alleged violations of law;

- Preparing reports on a quarterly basis documenting the disposition of all investigations during the preceding three months.

Disciplinary actions and procedures

The bill establishes additional grounds upon which a dietitian or respiratory care professional may be disciplined by the Board.[48] (Such discipline may include limiting, revoking, or suspending a license or limited permit, refusing to issue, renew, or reinstate a license or limited permit, or reprimanding or placing on probation the holder of a license or limited permit.)

The grounds for discipline established in the bill are similar to those applicable to other professionals currently subject to Medical Board oversight[49] and include the following: (1) departing from or failing to conform to minimal standards of care, (2) willfully betraying a professional confidence, (3) failing to cooperate in Board investigations, and (4) obtaining or attempting to obtain money or anything of value by fraudulent misrepresentation in the course of practice. At present, there are five grounds upon which the Board may discipline a dietitian and 14 for a respiratory care

[46] R.C. 4759.05 and 4761.03.

[47] *See, e.g.,* R.C. 4731.22(F).

[48] R.C. 4759.07 and 4761.09.

[49] *See e.g,* R.C. 4778.14.

professional. The bill increases the grounds to 20 for a dietitian and 24 for a respiratory care professional.

The bill also provides that when the Board refuses to grant or issue a license or permit, revokes a license or permit, refuses to renew a license or permit, or refuses to reinstate a license or permit, it may specify that its action is permanent. An individual subject to a permanent action taken by the Board is thereafter ineligible to hold a license or permit and the Board cannot accept an application for reinstatement or issuance of a license or permit.

The bill clarifies that the holder of license to practice issued by the former Ohio Board of Dietetics or former Ohio Respiratory Care Board can be disciplined by the Medical Board.[50] It also provides that the administrative procedures for taking disciplinary action against a dietitian or respiratory care professional are the same as those for other practitioners licensed or certified by the Board.[51]

Civil penalties

In addition to the disciplinary actions described above, the bill authorizes the Board to impose a civil penalty on a licensed dietitian or respiratory care professional who violates the Dietetics Law or Respiratory Care Law, respectively.[52] Current law allows the Board to impose a civil penalty on the other practitioners it regulates.[53] The bill clarifies that a civil penalty cannot be imposed for failing to satisfy continuing education requirements.

Before imposing a civil penalty, the Board must conduct an adjudication and an affirmative vote of not fewer than six Board members is required. The Board must determine the penalty's amount in accordance with guidelines the bill requires the Board to adopt. Under these guidelines, a civil penalty cannot exceed $20,000. The bill requires amounts received from the payment of civil penalties to be deposited in the state treasury to the credit of the State Medical Board Operating Fund.[54] However, it specifies that amounts received from the payment of penalties imposed as a result of practitioner impairment for alcohol or drug use must be used by the Board solely for investigations, enforcement, and compliance monitoring.

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[50] R.C. 4759.051 and 4761.04.

[51] *See e.g.*, R.C. 4731.22.

[52] R.C. 4759.071 and 4761.091.

[53] *See e.g.*, R.C. 4730.252.

[54] R.C. 4731.24.

Enforcement

The bill requires the Secretary of the Medical Board to enforce the laws relating to the practice of dietetics and respiratory care.[55] If the Secretary has knowledge or notice of a violation of the Dietetics Law or Respiratory Care Law, the Secretary must investigate the matter and upon probable cause, file a complaint and prosecute the offender. When requested by the Secretary, the prosecuting attorney of the appropriate county must take charge of and conduct the prosecution.

Summary suspension

The bill maintains the authority of the Board to suspend without prior hearing a license to practice respiratory care if there is clear and convincing evidence that the holder has violated any of the grounds upon which the Board may impose discipline and that continued practice by the holder presents a danger of immediate and serious harm to the public.[56] It also extends to the Board the authority to suspend without prior hearing a license to practice dietetics.[57] The bill further modifies existing summary suspension procedures under the Respiratory Care Law to align them with procedures applicable to other professionals licensed by the Board.

Injunctions

The bill authorizes the Board, Attorney General, county prosecutor, or any person who has knowledge of any individual engaging in the unauthorized practice of dietetics or respiratory care to seek an injunction in court to stop the individual's unauthorized practice.[58] These provisions are the same as those included in the laws governing other professionals licensed by the Board.[59] Under the current Respiratory Care Law, only the Board may seek a court order restraining unlawful activity or conduct.

MEDICAID MANAGED CARE

The bill provides that the General Assembly's authorization through the enactment of legislation is needed before home and community-based waiver services or nursing facility services are included in Medicaid managed care. However, the

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[55] R.C. 4759.012 and 4761.012.

[56] R.C. 4761.09.

[57] R.C. 4759.07.

[58] R.C. 4759.02 and 4761.10.

[59] *See e.g.*, R.C. 4760.18.

Medicaid program may require or permit participants of the Integrated Care Delivery System (i.e., MyCare Ohio) to obtain such services through managed care. Also, Medicaid recipients who receive such services may be designated for voluntary or mandatory participation in managed care to receive other included health care services.[60]

This is similar to a vetoed provision of the current main operating budget (Am. Sub. H.B. 49 of the 132nd General Assembly). That provision would have prohibited home and community-based waiver services and nursing facility services from being included in Medicaid managed care. As under the bill, the Medicaid program would have been authorized to require or permit participants of the Integrated Care Delivery System to obtain such services through managed care and Medicaid recipients who receive such services could have been designated for voluntary or mandatory participation in managed care to receive other included health care services. Unlike the bill, the vetoed provision of H.B. 49 also would have required the General Assembly to consider and vote on legislation authorizing the inclusion of the services in managed care, and, if the General Assembly enacted such legislation, established the Patient-Centered Medicaid Long-Term Care Delivery System Advisory Committee to advise the Joint Medicaid Oversight Committee on projects that measure improvements to the delivery of the services and periodically recommend to the Medicaid Director policy changes to make additional improvements.

The Governor did not veto a provision of H.B. 49 that establishes the temporary Patient-Centered Medicaid Managed Care Long-Term Services and Supports Study Committee to examine the merits of including in home and community-based waiver services and nursing facility services in Medicaid managed care. That committee is required to complete a report by December 31, 2018.[61]

HISTORY

ACTION	DATE
Introduced	03-21-17
Reported, H. Gov't Accountability & Oversight	06-06-17
Passed House (93-1)	06-21-17
Reported, S. Health, Human Services & Medicaid	---

H0145-RS-132.docx/emr

[60] R.C. 5167.03 (primary) and 5167.01.

[61] Section 333.270 of Am. Sub. H.B. 49 of the 132nd General Assembly.