OHIO LEGISLATIVE SERVICE COMMISSION

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Office of Research and Drafting

Legislative Budget Office

H.B. 122
134th General Assembly

Fiscal Note & Local Impact Statement

Click here for H.B. 122's Bill Analysis

Version: As Enacted

Primary Sponsors: Reps. Fraizer and Holmes

Local Impact Statement Procedure Required: Yes

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Highlights

- The bill's prohibition against health insurers imposing cost-sharing requirements related to specified types of communication, and its adding new health care providers to the list of those whose telehealth services must be reimbursed by health insurers have the potential to increase costs for the state and local governments to provide health benefits to employees and their dependents.
- Any increase in costs to the state health benefit plan would be paid from the Health Benefit Fund (Fund 8080). Fund 8080 receives funding through state employee payroll deductions and state agency contributions toward their employees' health benefits, which come out of the GRF and various other state funds.
- The prohibition is also likely to increase costs to local governments' health benefit plans, though LBO staff are uncertain about the extent of such increase.
- The bill may increase the Department of Insurance's administrative cost to monitor compliance with the bill's provisions. Any increase in such cost would be paid from the Department of Insurance Operating Fund (Fund 5540).[1]

[1] Revenue to Fund 5540 comes from various fees imposed on insurance companies, primarily insurance agent license fees and agent appointment fees.

- The bill permits specified health care professionals to provide telehealth services according to specified conditions and standards. Relevant licensing boards could realize an increase in costs to adopt rules, educate licensees, and ensure compliance.
- The bill codifies the types of medical practitioners which are eligible for Medicaid coverage via telehealth. The Ohio Department of Medicaid (ODM) filed updated rules to make telehealth permanently available to enrollees. These rules became effective in November 2020. Most of the practitioners in the bill are currently allowed to provide telehealth services and receive reimbursements under these rules. To the extent that the bill adds practitioners or services or results in changes to procedures, there could be some costs.
- The bill requires ODM to establish a credentialing program, to include a credentialing committee, that will review care metrics of Medicaid providers. ODM is permitted to adopt rules as needed to establish this program. These provisions may create administrative costs for the Department.

Detailed Analysis

Health insurers

Current law requires a health benefit plan to provide coverage for telehealth services on the same basis and to the same extent that the plan provides coverage for in-person health care services.[2] It allows a plan to impose cost-sharing requirements with regard to such telehealth services, as long as the requirements do not exceed those for equivalent in-person health care services.

The bill prohibits a health benefit plan from imposing cost-sharing[3] requirements in regard to telehealth services delivered via a communication when (1) the communication was initiated by the health care professional, (2) the patient consented to receive a telehealth service from that provider on any prior occasion, and (3) the communication is conducted for the purposes of preventive medicine only. The bill prohibits health care professionals from charging certain fees to the health benefit plan or patients who are receiving such telehealth services. The bill also adds new types of health care professionals to the list of those whose telehealth services must be reimbursed by health benefit plans. Under current law, only the services of licensed physicians, physician assistants, and advanced practice registered nurses must be reimbursed. The bill adds pharmacists,[4] optometrists licensed to practice under a therapeutic pharmaceutical agents certificate, licensed psychologists, school psychologists, chiropractors, audiologists,

[2] Enacted in H.B. 166 of the 133rd General Assembly, the requirement applies to health benefit plans issued, offered, or renewed on or after January 1, 2021. The bill removes this effective date. Also, current law uses the terminology "telemedicine services," while the bill refers to "telehealth services."

[3] "Cost-sharing" means the cost to a covered individual under a health benefit plan according to any coverage limit, copayment, coinsurance, deductible, or other out-of-pocket expense requirements imposed by the plan.

[4] The bill specifies that a pharmacist must dispense a dangerous drug under a telehealth mechanism only if authorized to do so under rules adopted by the State Board of Pharmacy.

speech language pathologists, occupational and physical therapists, occupational and physical therapy assistants, professional clinical counselors, independent social workers, independent marriage and family therapists, independent chemical dependency counselors, dietitians, respiratory care professionals, genetic counselors, and a certified Ohio behavior analyst to the list of health care professionals.

The bill allows the Superintendent of Insurance to adopt any necessary rules to carry out its provisions. The bill applies to "health benefit plans" as defined under existing law in section 3922.01 of the Revised Code, which includes public employees' health benefit plans.

Telehealth services are currently covered in the state's health benefit plan. However, the bill's prohibition against cost sharing for telehealth services delivered via specified types of communication and its expansion of the types of health care professionals whose telehealth services must be reimbursed may increase costs to the state and local governments to provide health benefits to employees and their dependents. Any increase in costs to the state health benefit plan would be paid from the Health Benefit Fund (Fund 8080). Fund 8080 receives funding through state employee payroll deductions and state agency contributions toward their employees' health benefits, which come out of the GRF and various other state funds. LBO staff could not determine the magnitude of the bill's fiscal impact on counties, municipalities, townships, and school districts statewide due to lack of information on the number of plans that do not currently comply with the bill's requirements. To the extent that a particular local government's health benefit plan complies with the bill's requirements, there would be no impact on its costs.

The bill may increase the Department of Insurance's administrative costs for regulating health insurers. Any increase in the Department's administrative costs would be paid from the Department of Insurance Operating Fund (Fund 5540).

Health care professionals and telehealth services

The bill permits specified health care professionals to provide telehealth services and requires those services be provided according to specified conditions and standards. The bill specifically states that it must not be interpreted as altering any laws or rules relating to the practice of dentistry that are in effect on the bill's effective date. The bill allows a physician who holds a certificate to recommend a patient to be treated with medical marijuana to conduct the required patient examination either in person or through telehealth services before recommending medical marijuana to such patient. For purposes of rules regarding telehealth services adopted by a board, the bill specifies that medical marijuana is not considered a schedule II controlled substance.

In addition, the bill permits certain health care licensing boards to adopt rules as necessary to carry out the bill's provisions regarding the provision of telehealth services, and requires that any rules adopted by a board generally establish the standard of care for telehealth services to be the same as the standard for in-person services. As a result, it is possible that certain boards may realize costs to adopt rules and any other necessary administrative measures to comply with the bill, including costs to educate licensees or ensure compliance. The bill outlines some requirements regarding the provision of telehealth services, and allows a board to

adopt rules that generally require an in-person examination of a new patient in specified circumstances, and allows a board to suspend enforcement of rules in effect on the bill's effective date while the board amends or adopts new rules that are consistent with the bill. It is possible that there could be some costs to comply with these provisions for state or local government entities that hire individuals who hold health care licenses impacted by the bill.

The bill also 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. This might decrease any associated civil court case costs.

Medicaid

Existing law requires the Ohio Department of Medicaid (ODM) 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 Department 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. In addition, the bill specifies the categories of medical practitioners which are eligible to provide telehealth services under Medicaid. During the COVID-19 emergency, the Ohio Department of Medicaid issued emergency rules and policies which permitted many telehealth services to be performed by Medicaid providers and be paid for by Medicaid.[5] In November 2020, updated telehealth rules filed by the Ohio Department of Medicaid became effective. The rules outlined the practitioners who could perform telehealth services, the provider types that can bill for services, the services that can be rendered, and provider responsibilities.[6] Many of the same practitioners outlined in rules are specified in the bill, so many telehealth services appear to be reimbursable under Medicaid now. To the extent that the bill adds practitioners or services or results in changes to procedures, there could be some costs.

The bill requires ODM to establish a credentialing program, to include a credentialing committee, that will review the competence, professional conduct, and quality of care provided by Medicaid providers. The Department is permitted to adopt rules to implement this program. Developing and adopting these rules, as well as administering the committee, may create administrative costs for the Department.

Mental health and addiction services telehealth provision

Under existing law, the Ohio Department of Mental Health and Addiction Services (OhioMHAS) certifies community mental health service providers and community addiction service providers. The bill specifies requirements that these providers must meet to provide telehealth. The bill allows OhioMHAS to adopt rules as necessary to carry out the bill's requirements. There could be costs associated with rule adoption and possibly to ensure that these certified providers comply.

[5] ODM Emergency Rule 5160-1-21 Telehealth during a state of emergency and associated appendix.

[6] Ohio Administration Code 5160-1-18.

Assistance for individuals with developmental disabilities

The bill also provides for an individual who has been diagnosed with a permanent disability in need of surgery or any other health care procedure, test, or clinical care visit to have a parent or guardian present with them during a health care appointment or procedure if the presence is necessary to alleviate any negative reactions that may be experienced by the individual. This provision specifically addresses that an individual with a permanent disability is entitled to have a parent or guardian present during a public health emergency or pandemic, etc. The bill specifies that the Director of Health has the authority to take any actions which are necessary to enforce these provisions.

One-Bite Program

The bill modifies the One-Bite Program established by the State Medical Board by allowing applicants for licensure to participate. The bill also specifies that an applicant for licensure who discloses to the Board previous impairment and satisfies certain conditions is not subject to discipline for that impairment. If the Board grants an applicant a license to practice, it must refer the now-practitioner to the monitoring organization that conducts the One-Bite Program. The practitioner is required to enter into a monitoring agreement with the monitoring organization conducting the program. Any costs would depend on the number of eligible applicants. However, practitioners are responsible for costs associated with participating in the program.

Suspension of open enrollment, reinsurance, and option for conversion programs

The bill would extend until January 1, 2026, the current suspension of the enforcement of (1) Ohio's Open Enrollment Program, (2) Ohio's Health Reinsurance Program, and (3) the option for conversion (a) from a group to individual contract under an existing contract with a health insuring corporation (HIC), (b) from a nongroup contract to a contract issued on a direct payment basis under an existing contract with an HIC, and (c) from a group policy to an individual policy under an existing policy with a sickness and accident insurer. Under current law, the suspension began on January 1, 2014, and would expire on January 1, 2022. The provisions have no direct fiscal effect.

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