
DEPARTMENT OF MENTAL HEALTH AND ADDICTION SERVICES

Suspending admissions and taking action against a license

- Authorizes the Ohio Department of Mental Health and Addiction Services (OhioMHAS) Director to suspend admissions at the following facilities without a hearing if the licensee has demonstrated a pattern of serious noncompliance or the violation creates a substantial health and safety risk: residential facilities, certain community addiction services providers, and hospitals for mentally ill persons.
- Specifies a process for appeals when admissions are suspended without a prior hearing.
- Regarding suspending admissions, denying an application, or refusing to renew or revoking a license or certification, (1) authorizes OhioMHAS to take action regardless of whether the deficiencies have been corrected at the time of the hearing and (2) prohibits it from permitting an opportunity for submitting a plan of correction.

Certifiable services and supports

- Specifies reasons the OhioMHAS Director may refuse to certify, renew, or revoke certifiable services and supports provided by a community mental health or addiction services provider.
- Eliminates requirements that the Director (1) identify areas of noncompliance for an applicant who does not satisfy certification standards and (2) provide applicants with reasonable time to demonstrate compliance.

Licensing boards and confidential treatment and monitoring programs

- Supports new or existing confidential treatment and monitoring programs offered by occupational licensing boards for healthcare workers with mental health or substance use disorders, including by allowing boards to contract with certain monitoring organizations to administer the programs.

Confidentiality of substance use disorder records

- Modifies existing requirements for maintaining confidentiality of records regarding drug treatment programs and services that are licensed or certified by OhioMHAS.
- Establishes confidentiality requirements based on federal law and applies them to federally assisted programs for substance use disorder treatment.
- Requires that the disclosure of any confidential information comply with the federal requirements.

Opioid treatment programs

- Lengthens the term of a license to operate an opioid treatment program (OTP) to two years, from one year under current law.

- Requires OhioMHAS to inspect all community addiction services providers licensed to operate OTPs at least biennially, as opposed to annually under current law.
- Permits a community addiction services provider to employ an individual who receives medication-assisted treatment if the individual is a certified peer recovery supporter.

Substance use disorder treatment in drug courts

- Continues a medication-assisted drug court program to provide addiction treatment to persons with substance use disorders.
- Modifies the program by authorizing services to be included for withdrawal management or detoxification, including drugs used in providing those services.
- Requires community addiction services providers to provide specified treatment to the participants in the program based on the individual needs of each participant.

County jails reimbursed for substance use treatment drugs

- Establishes a program to reimburse counties for the costs of drugs used in medication-assisted treatment, withdrawal management, or detoxification among inmates of county jails.

Pilot to dispense controlled substances in lockable containers

- Requires OhioMHAS to operate a two-year pilot program to dispense schedule II controlled substances in lockable or tamper-evident containers.

ADAMHS board composition and appointment

- Authorizes boards of county commissioners, within three years, to reduce the membership of existing alcohol, drug addiction, and mental health services (ADAMHS) boards, alcohol and drug addiction services boards, and community and mental health boards from 18 or 14 members to between five and nine members.
- Requires newly established boards to consist of five to nine members.
- Modifies the appointment authority for board members so that 80% of members are appointed by the board of county commissioners and 20% by the OhioMHAS Director.
- Eliminates requirements that the OhioMHAS Director ensure that the boards have a number of members with specified experiences and qualifications.

ADAMHS board duties

- Requires an ADAMHS board to work with government programs that provide public health benefits for the purpose of coordinating public health benefits and improving the administration and management of those government programs.
- Requires ADAMHS boards to comply with health information privacy standards under the federal “Health Insurance Portability and Accountability Act of 1996” (HIPAA).

Stabilization centers

- Continues the requirement that ADAMHS boards establish and administer, in collaboration with the other ADAMHS boards that serve the same state psychiatric hospital region, six mental health crisis stabilization centers.
- Requires the establishment and administration, in collaboration with the other ADAMHS boards that serve the same state psychiatric hospital region, acute substance use disorder stabilization centers.

Family and children first council flexible funding pool

- Permits a county family and children first council to create a flexible funding pool to assure access to services by families, children, and seniors in need of protective services.

Suspending admissions and taking action against a license

(R.C. 5119.33, 5119.34, and 5119.36)

Suspending admissions

Current law authorizes the Ohio Department of Mental Health and Addiction Services (OhioMHAS) to suspend admissions at the following: hospitals that receive mentally ill persons, residential facilities, and community addiction services providers that provide overnight accommodations. The bill specifies that proceedings initiated to suspend admissions and appeals are generally governed by the Administrative Procedure Act (R.C. Chapter 119). However, if the OhioMHAS Director determines that the facility has demonstrated a pattern of serious noncompliance or that a violation creates a substantial risk to the health and safety of patients or residents, the Director may suspend admissions without a hearing. The order suspending admissions must be lifted if the Director determines the violation that formed the basis for the order has been corrected.

When admissions are suspended without a hearing, all of the following apply to an appeal of that order:

- The facility may request a hearing not later than ten days after receiving the notice;
- If a timely request for a hearing is made, the hearing must commence within 30 days;
- After commencing, the hearing must continue uninterrupted on business days unless the parties agree otherwise;
- If the hearing is conducted by a hearing examiner, the examiner must file a report and recommendations with OhioMHAS within ten days after the later of the hearing ending, a transcript being received, or briefs being received, as applicable;
- A written copy of the report and recommendations must be sent by certified mail to the facility or the facility's attorney, if applicable, within five days of the report being filed with OhioMHAS;

- The facility may file objections within five days of receiving the report;
- OhioMHAS must issue an order approving, modifying, or disapproving the report and recommendations within 15 days of it being filed by the hearing examiner;
- OhioMHAS must lift the order suspending admissions if it determines that the violation that formed the basis for the order has been corrected.

Procedures

The bill specifies that in proceedings to suspend admissions, or to deny an application, refuse to renew, or revoke a license or certification, OhioMHAS may take those actions regardless of whether some or all of the deficiencies that prompted the proceedings have been corrected at the time of the hearing. When OhioMHAS issues an order related to those proceedings or actions it may not permit an opportunity for submitting a plan of correction.

The bill also makes changes regarding hospitals that receive mentally ill persons, residential facilities, and community mental health and addiction services providers, to specify that proceedings initiated to deny applications for licenses or certification, to refuse to renew, or to revoke those licenses or certifications are governed by the Administrative Procedure Act. If an order suspending admissions has been issued, it remains in effect during the pendency of the proceedings.

Certifiable services and supports

(R.C. 5119.36 and 5119.99)

Under current law, OhioMHAS certifies certifiable services and supports provided by community mental health services providers and community addiction services providers. The bill specifies that the OhioMHAS Director may refuse to certify certifiable services and supports, refuse to renew certification, or revoke certification if any of the following apply to an applicant or the holder of a certification:

- The applicant or holder is not in compliance with OhioMHAS rules;
- The applicant or holder has been cited for a pattern of serious noncompliance or repeated violations of statutes or rules during the current or any previous certification period;
- The applicant or holder submits false or misleading information as part of a certification application, renewal, or investigation.

Also regarding certification, the bill eliminates existing requirements that the Director (1) identify areas of noncompliance for an applicant who does not satisfy certification standards and (2) provide applicants with reasonable time to demonstrate compliance.

Licensing boards and confidential treatment and monitoring programs

(Section 337.40)

The bill earmarks funding to be used to expand existing or support new confidential treatment and monitoring programs offered by occupational licensing boards to licensed

healthcare workers with mental health or substance use disorders. It also authorizes an occupational licensing board to contract with a monitoring organization to administer a confidential treatment and monitoring program, but only if the organization meets all of the following requirements:

1. Is organized as a not-for-profit entity and exempt from federal income taxation under subsection 501(c)(3) of the Internal Revenue Code;

2. Contracts with or employs to serve as the organization's medical director an individual who is an Ohio-licensed physician or has training and expertise in addiction medicine or psychiatry; and

3. Contracts with or employs one or more individuals licensed by the State Board of Psychology, the Chemical Dependency Professionals Board, and the Counselor, Social Worker, and Marriage and Family Therapist Board as necessary for the organization's operation.

Confidentiality of substance use disorder records

(R.C. 5119.27)

The bill modifies requirements for maintaining confidentiality of records or information regarding drug treatment programs and services that are licensed or certified by OhioMHAS. In their place, the bill establishes confidentiality requirements based on federal law and applies those requirements to records or information regarding federally assisted programs for substance use disorder treatment. The bill requires the disclosure of any confidential information to comply with the federal requirements.

As part of updating the confidentiality requirements, when referring to programs used within the criminal justice system, the bill updates outdated references to "rehabilitation in lieu of conviction" to instead refer to "intervention in lieu of conviction."

Opioid treatment programs

(R.C. 5119.37; Section 337.200)

License expiration

The bill extends the license period for opioid treatment programs (OTPs) to two years, from one year under current law. In conjunction with that change, it requires OhioMHAS to inspect all community addiction services providers licensed to operate OTPs at least biennially, as opposed to annually under current law.

Employees

The bill permits a community addiction services provider to employ an individual who receives medication-assisted treatment if the individual is a certified peer recovery supporter and either holds a valid peer recovery supporter certificate issued under current administrative rules, or is in the process of obtaining that certificate. Under current law, a community addiction services provider is prohibited from employing an individual who receives medication-assisted treatment from the provider.

Substance use disorder stabilization centers

The bill requires ADAMHS boards to submit to the OhioMHAS Director a plan for the establishment and administration, in collaboration with the other ADAMHS boards that serve the same state psychiatric hospital region, acute substance use disorder stabilization centers. There must be at least one center in each state psychiatric hospital region.

Substance use disorder treatment in drug courts

(Section 337.60)

The bill continues a requirement from previous biennia that OhioMHAS conduct a program to provide substance use disorder treatment, including medication-assisted treatment and recovery supports, to persons who are eligible to participate in a medication-assisted treatment (MAT) drug court program. OhioMHAS's program is to be conducted in a manner similar to programs that were established and funded by the previous three main appropriations acts. The bill, however, modifies the program by also permitting the program to include services for withdrawal management or detoxification, including drugs used for those services.

In conducting the program, OhioMHAS must collaborate with the Ohio Supreme Court, the Department of Rehabilitation and Correction, and any state agency that may be of assistance in accomplishing the objectives of the program. OhioMHAS also may collaborate with the ADAMHS board that serves the county in which a participating court is located and with the local law enforcement agencies serving that county.

OhioMHAS must conduct its program in collaboration with any counties in Ohio that are conducting MAT drug court programs. It also may conduct its program in collaboration with any other court with a MAT drug court program.

Selection of participants

A MAT drug court program must select the participants for OhioMHAS's program. The participants are to be selected because of having a substance use disorder. Those who are selected must be either (1) criminal offenders, including offenders under community control sanctions, or (2) involved in a family drug or dependency court. They must meet the legal and clinical eligibility criteria for the MAT drug court program and be active participants in that program or be under a community control sanction with the program's participating judge. The total number of participants in OhioMHAS's program at any time is limited to 1,500, subject to available funding. OhioMHAS may authorize additional participants in circumstances it considers appropriate. After being enrolled, a participant must comply with all of the MAT drug court program's requirements.

Treatment

Only a community addiction services provider is eligible to provide substance use disorder treatment, including any recovery supports, under OhioMHAS's program. The provider must:

- Provide treatment based on an integrated service delivery model that consists of the coordination of care between a prescriber and the provider;

- Assess potential program participants to determine whether they would benefit from treatment and monitoring;
- Determine, based on the assessment, the treatment needs of the participants;
- Develop individualized goals and objectives for the participants;
- Provide access to the drugs that are included in the program's treatment;
- Provide other types of therapies, including psychosocial therapies, for both substance abuse disorder and any co-occurring disorders;
- Monitor program compliance through the use of regular drug testing, including urinalysis, of the participants; and
- Provide access to time-limited recovery supports that are patient-specific and help eliminate barriers to treatment, such as assistance with housing, transportation, child care, job training, obtaining a driver's license or state identification card, and any other relevant matter.

In the case of drugs that are used for substance use disorder treatment, the following conditions apply:

- A drug may be used only if the drug has been federally approved for use in treating dependence on opioids, alcohol, or both; in preventing relapse; or in providing services for withdrawal management or detoxification;
- One or more drugs may be used, but each drug that is used must constitute either or both: (1) long-acting antagonist therapy or partial or full agonist therapy or (2) alpha-2 agonist therapy for withdrawal management or detoxification;
- If a partial or full agonist therapy is used, the program must provide safeguards, such as routine drug testing of participants, to minimize abuse and diversion.

Planning

To ensure that funds appropriated to support OhioMHAS's program are used in the most efficient manner, with a goal of enrolling the maximum number of participants, the bill requires the Medicaid Director to develop plans in collaboration with major Ohio health care plans. However, there can be no prior authorizations or step therapy for program participants to have access to any drug included in the program's substance use disorder treatment. The plans must ensure:

- The development of an efficient and timely process for review of eligibility for health benefits for all program participants;
- A rapid conversion to reimbursement for all health care services by the participant's health care plan following approval for coverage of health care benefits;
- The development of a consistent benefit package that provides ready access to and reimbursement for essential health care services, including primary health care, alcohol and opioid detoxification services and drugs used in providing them, appropriate

psychosocial services, and drugs used in providing long-acting injectable antagonist therapies and partial or full agonist therapies; and

- The development of guidelines that require the provision of all treatment services, including medication, with minimal administrative barriers and within time frames that meet the requirements of individual patient care plans.

County jails reimbursed for substance use treatment drugs

(R.C. 5119.191)

The bill creates an OhioMHAS-administered program to reimburse counties for the costs of drugs used in medication-assisted treatment (MAT), withdrawal management, or detoxification among inmates of county jails. OhioMHAS must allocate funds to each county for reimbursement based on factors it considers appropriate. The drugs used must be approved by the U.S. Food and Drug Administration for use in MAT, mitigating opioid withdrawal symptoms, or assisting with detoxification. These drugs include oral, injectable, long-acting, or extended-release forms of full agonists, partial agonists, antagonists, and alpha-2 adrenergic agonists. Under the program, each county must ensure that inmates have access to any such prescribed drugs that are covered under Medicaid's fee-for-service component. The OhioMHAS Director may adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119) as necessary to implement the program.

Pilot to dispense controlled substances in lockable containers

(Sections 337.205 and 337.40)

The bill requires OhioMHAS to operate a pilot program under which participating pharmacies will dispense schedule II controlled substances in pill form in lockable containers or tamper-evident containers. The pilot is to be operated for the earlier of two years or until appropriated funds – \$1 million in each fiscal year – are expended.

The bill defines "lockable container" as a container that (1) has "special packaging," which is generally defined under federal law as packaging designed to be significantly difficult for children to open, but not difficult for normal adults to use,⁸³ and (2) can be unlocked physically using a key, or physically or electronically using a code or password. "Tamper evident container" is defined by the bill as a container that has special packaging and displays a visual sign in the event of unauthorized entry or displays the time the container was last opened.

Pharmacy participation and reimbursement

Any pharmacy may volunteer to participate in the pilot program. Participating pharmacies are required to dispense schedule II controlled substances in lockable or tamper-evident containers unless the patient or an individual acting on the patient's behalf requests otherwise.

OhioMHAS must reimburse pharmacies for expenses incurred in participating in the pilot program, including a dispensing fee to be determined by OhioMHAS. Expenses a pharmacy incurs

⁸³ "Poison Prevention Packaging Act of 1970," 15 U.S.C. 1471.

for the containers cannot be charged to a patient, an individual acting on behalf of the patient, or a health insurer or other third-party payer.

Report

The bill requires OhioMHAS to prepare a report at the conclusion of the pilot program and submit it to the General Assembly. In preparing the report, OhioMHAS must contract with a third-party research organization to assess whether a measured decrease in diversion of schedule II controlled substances occurred regarding drugs dispensed through the program as compared to those dispensed outside of the program.

Qualified immunity

The bill grants immunity from liability to pharmacists, pharmacist delegates, and pharmacies for actions taken in good faith in accordance with the bill. The qualified immunity applies to damages in a civil action, criminal prosecution, and professional disciplinary action.

Rules

OhioMHAS may adopt rules to administer the pilot program. The rules must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119).

ADAMHS boards

Composition and appointment

(R.C. 340.02 and 340.021)

The bill modifies the composition and appointment requirements for the following boards:

1. Alcohol, drug addiction, and mental health services (ADAMHS) boards;
2. Alcohol and drug addiction services boards; and
3. Community mental health boards.

Current law requires ADAMHS boards to consist of 18 or 14 members. But the law authorized a board, if it elected by September 30, 2013, and received approval of the board of county commissioners and notified the OhioMHAS Director by January 1, 2014, to reduce from 18 to 14 members. Similarly, current law requires an alcohol and drug addiction services board and a community mental health board to consist of 18 or 14 members, with an option to reduce from 18 to 14 members by notice to the Director by January 1, 2014.

The bill requires or permits the above-mentioned boards to reduce to between five and nine members, as follows:

- Boards established on or after the bill's effective date must consist of between five and nine members.
- At the election of the board of county commissioners, boards existing on the bill's effective date may be reduced from 18 or 14 members to between five and nine members. The board of county commissioners has three years after the bill's effective

date to make an election to reduce the board size. The reduction may occur by attrition as board members' terms expire.

The bill also modifies the percentage of board seats appointed by the board of county commissioners and by the OhioMHAS Director, reducing the percentage of board seats the Director appoints. The bill requires the board of county commissioners to appoint 80% of board members and the Director to appoint 20%. Current law requires that for 18-member ADAMHS boards, the board of county commissioners appoints ten members and the Director appoints eight members. For 14-member boards, the board of county commissioners appoints eight members and the Director appoints six members. Current law requires that for 18-member alcohol and drug addiction services boards and community mental health boards, the board of county commissioners appoints 12 members and the Director appoints six members.

Finally, the bill also eliminates law requiring the OhioMHAS Director to ensure that the boards have a number of members with specified experiences and qualifications. For example, an ADAMHS board's membership currently must include a mental health clinician, a mental health service recipient and a relative of a recipient, an addiction services clinician, and an addiction services recipient and a relative of a recipient.

Duties

(R.C. 340.03)

The bill makes two changes to current law governing the duties of ADAMHS boards. First, it requires them – in serving as the community addiction and mental health planning agencies for counties under each board's jurisdiction – to work with government programs that provide public health benefits for the purpose of coordinating public health benefits and improving their administration and management. This is in addition to working with judicial agencies and other social agencies, as provided under current law.

Second, it requires ADAMHS boards to comply with health information privacy standards as covered entities under the federal "Health Insurance Portability and Accountability Act of 1996" (HIPAA).⁸⁴

Mental health crisis stabilization centers

(Sections 337.40 and 337.130)

The bill continues a requirement, first established for the FY 2019-FY 2020 biennium, that OhioMHAS allocate among the ADAMHS boards, in each of FY 2022 and FY 2023, \$1.5 million for six mental health crisis stabilization centers. Each board must use its allocation to establish and administer a stabilization center in collaboration with the other ADAMHS boards that serve the same state psychiatric hospital region. At least one center must be located in each of the six state psychiatric hospital regions.

⁸⁴ Additional information about HIPAA can be found at the following link: Centers for Disease Control and Prevention, *Health Insurance Portability and Accountability Act of 1996 (HIPAA)*, <https://www.cdc.gov/php/publications/topic/hipaa.html>.

ADAMHS boards must ensure that each center complies with the following:

- It must admit individuals before and after they receive treatment and care at hospital emergency departments or freestanding emergency departments.
- It must admit individuals before and after they are confined in state correctional institutions, local correctional facilities, or privately operated and managed correctional facilities.
- It must have a Medicaid provider agreement.
- It must admit individuals who have been identified as needing the stabilization services provided by the center.
- It must connect individuals when they are discharged from the center with community-based continuum of care services and supports.

Family and children first council flexible funding pool

(Section 337.160)

The bill permits a county family and children first council to establish and operate a flexible funding pool to assure access to needed services by families, children, and older adults who need protective services. A county council that desires such a pool must abide by all of the following:

- The pool must be created and operate according to formal guidance issued by the state Family and Children First Cabinet Council.
- The county council must produce an annual report on its use of the pooled funds. The report must conform to guidance issued by the state council.
- Unless otherwise restricted, the pool may receive transfers of state general revenue funds allocated to local entities to support services to families and children.
- The pool may receive only transfers of amounts that can be redirected without hindering the objective for which the initial allocation is designated.
- The director of the local agency that originally received the allocation must approve the transfer to the pool.