



Senate Health Committee

Testimony of Stephanie M. Loucka, Executive Director, State Medical Board of Ohio
November 10, 2021

Chairman Huffman, Vice Chair Antani, Ranking Member Antonio and members of the Senate Health Committee, thank you for the opportunity to speak today regarding Substitute House Bill 122. The State Medical Board of Ohio (the Board) greatly appreciates the efforts of the 134th General Assembly to expand access to health care via telehealth.

The State Medical Board of Ohio has discussed telehealth and the new opportunities it brings our state over the last year at its meetings. The Board is very supportive of the concept of the expansion of telehealth. We recognize the value that telehealth provides to our citizens, especially during the Covid-19 pandemic and especially in areas of healthcare shortages. The Board is also dedicated to ensuring that legislation includes necessary public safety measures.

The Board believes we need guardrails to ensure patient safety, specifically in situations when opioids and other controlled substances are being prescribed. The legislature worked diligently and with great intention to enact laws that would fight back the awful impact of the opiate epidemic on our state. Legislative and regulatory changes were a result of policy makers, law enforcement officials and treatment professionals coming together to identify practical solutions. In light of the evolution of telehealth, it is certainly necessary to revisit some of those regulatory requirements; however, we do not believe the General Assembly intends to eliminate all in-person regulatory requirements.

The Board recommends a technical correction and an implementation provision for Substitute House Bill 122.

Technical Correction

Today, the Board has a series of rules that have in-person requirements relative to prescribing controlled substances, including opioids and stimulants, as well as medication assisted treatment. Existing ORC 4731.74 (B), specifically requires the Board to “adopt rules governing the requirements for a physician to prescribe, personally furnish, otherwise provide, or cause to be provided a prescription drug to a person on whom the physician has never conducted a physical examination and who is at a location remote from the physician.”

To ensure the Board’s ability to enforce the requirements of ORC 4731.74(B), the Board respectfully requests that the intent language of 4743.09(G) be revised to **delete the following:**

It is also the intent of the general assembly that no health care professional licensing board reduce access to telehealth services to a level below that which patients were able to utilize telehealth services during the Covid-19 pandemic.

This language conflicts with existing rules and laws that protect the public from bad prescribers. Additionally, the intent language codifies health care boards' responses to an unprecedented pandemic. This will serve as a deterrent to agile responses from regulatory boards who are charged with protecting the public in future emergencies.

As an alternative to the deletion of the intent language, the Board recommends an amendment to proposed 4743.09(B) of Substitute House Bill 122. 4743.09(B), as drafted, states "Each health care professional licensing board shall permit a health care professional under its jurisdiction to provide the professional's services as telehealth services"

The Board seeks to add the following technical correction "except as otherwise specified for prescribing opioids or other controlled substances."

The new language would read: "Each health care professional licensing board shall permit a health care professional under its jurisdiction to provide the professional's services as telehealth services, except as otherwise specified for prescribing opioids or other controlled substances"

We do not believe it is the intent of the General Assembly to expressly prohibit the board from regulating **some** in-person requirements for providers prescribing dangerous drugs. While rule requirements have been relaxed in response to the unprecedented pandemic, the existing controlled substance prescribing rules, and specifically the opioid prescribing rules, protect the citizens of Ohio. These rules and some of their in-person requirements are a necessary safeguard as the state continues to battle the opioid crisis.

The Board has already begun, and is committed to continue, a robust stakeholder process to craft the in-person requirements of the controlled substance and opioid prescribing rules to standards that will allow for greater access for patients via telehealth, yet also maintain public safety.

The Board points to our neighbor states of Indiana and Kentucky, both of whom just recently enacted updated telehealth laws. In Indiana, opioids (other than medication assisted treatment) may not be prescribed by telehealth. Additionally, controlled substances may only be prescribed if certain conditions, including an in-person exam by a licensed Indiana healthcare provider, are met. Kentucky allows for state agencies to require 'in person' requirements when the state agency deems it medically necessary.

Implementation

The Board would like to provide clarity and transparency to the stakeholder community about telehealth regulations. Accordingly, the Board suggests the **addition of the following language: The General Assembly finds that the health care professional licensing boards may adopt rules regarding telehealth pursuant to R.C. 4743.09(B). While the health care professional licensing boards are implementing this statutory authority, these boards may suspend enforcement of their current rules involving telehealth and/or in-person health care service or prescribing requirements until new or amended rules are adopted or May 31, 2022, whichever occurs first.**

Conclusion

In conclusion, the State Medical Board appreciates the tool of telemedicine. This tool allows providers to expand their reach and provide high quality, convenient health care to patients who might not otherwise receive that care. However, the tool must not come at the expense of patient safety.

Thank you again for allowing me to speak to you today. I will gladly answer any questions you have at this time.
