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Office of Research
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S.B. 252
133rd General Assembly

Final Analysis

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Version: As Passed by the General Assembly

Primary Sponsors: Sens. Hackett and Craig

Effective date: March 24, 2021

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UPDATED VERSION*

SUMMARY

- Prohibits the use of “fail first” coverage limitations with regard to stage four advanced metastatic cancer.
- Declares violations of the bill’s prohibitions to be an unfair and deceptive practice in the business of insurance.

DETAILED ANALYSIS

Overview

The act prohibits the use of “fail first” coverage limitations with regard to stage four advanced metastatic cancer and associated conditions. “Stage four metastatic cancer” refers to a cancer that has spread from its point of origination to other parts of the body. Fail first coverage limitations make coverage of a specified drug dependent upon a patient first trying and failing to respond to a different drug. It is one of a group of coverage limitations commonly referred to as “step therapy.” The act applies to health insuring corporations, sickness and accident insurers, multiple employee welfare arrangements, and public employee benefit plans.¹

* This version reflects Revised Code number changes made by the LSC Director under R.C. 101.131. (See <https://www.legislature.ohio.gov/download?key=16661&format=pdf.>)

¹ R.C. 3902.60(B) and (C) and R.C. 3922.01, not in the act.

Fail first

The act prohibits health benefit plans that cover the treatment of stage four metastatic cancer and associated conditions from making coverage of drugs that are prescribed to treat the cancer or associated conditions dependent on either:

- Failure to successfully respond to a different drug; or
- A history of failing to respond to a different drug.

This restriction applies only to uses of such drugs that are consistent with either of the following:

- An indication approved by or described in either of the following for the treatment of metastatic cancer:
 - The U.S. Food and Drug Administration;
 - The National Comprehensive Cancer Network Drugs and Biologics Compendium.
- The best practices for the treatment of stage four advanced metastatic cancer, as supported by peer-reviewed medical literature.²

Penalties

A violation of the act's requirements is an unfair and deceptive practice in the business of insurance. Under continuing law, a person who is found to have committed an unfair and deceptive practice in the business of insurance is subject to any or all of the following sanctions:

- Suspension or revocation of the person's license to engage in the business of insurance;
- Prohibition on an insurance company or insurance agency employing the person or permitting the person to serve the company or agency in any capacity for a period of time;
- Return of any payments received by the person as a result of the violation;
- Fees for attorneys and other costs of any investigation into the violations committed by the person.³

Exemption from review by the Superintendent of Insurance

The banning of fail first coverage limitations might be considered a mandated health benefit. Under continuing law, if the General Assembly enacts a provision for mandated health benefits, that provision cannot be applied to any health benefit plan until the Superintendent of Insurance determines that it can be applied fully and equally in all respects to employee benefit plans subject to regulation by the federal "Employee Retirement Income Security Act of 1974,"

² R.C. 3902.61(A) and (B).

³ R.C. 3902.61(C) and R.C. 3901.22, not in the act.

(ERISA), and to employee benefit plans established or modified by the state or any of its political subdivisions. ERISA appears to preempt any state regulation of such plans.

The act exempts its requirements from this restriction.⁴

HISTORY

Action	Date
Introduced	12-09-19
Reported, S. Health, Human Services, & Medicaid	03-09-20
Passed Senate (33-0)	06-03-20
Reported, H. Health	12-02-20
Passed House (83-1)	12-08-20

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⁴ R.C. 3902.61(A) and R.C. 3901.71, not in the act.