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# OHIO LEGISLATIVE SERVICE COMMISSION

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S.B. 314  
134<sup>th</sup> General Assembly

## Bill Analysis

**Version:** As Introduced

**Primary Sponsor:** Sen. Maharath

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### SUMMARY

- Requires the Department of Health to adopt rules establishing donor human milk safety standards.
- Requires health benefit plans and the Medicaid program to cover medically necessary donor human milk for inpatient use.

### DETAILED ANALYSIS

#### Donor human milk standards

The bill requires the Department of Health to adopt standards to ensure the safety of donor human milk and human milk-derived products. In doing so, the Department must consider clinical, evidence-based guidelines established by a national accrediting organization. The standards must address donor screening, milk handling and processing, and recordkeeping. The Department must consider whether additional testing standards are needed, including testing for the presence of viruses, bacteria, and drugs. The standards must be adopted through rules in accordance with the Administrative Procedure Act.<sup>1</sup>

#### Insurance and Medicaid coverage of donor human milk

The bill requires health benefit plans<sup>2</sup> and the Medicaid program to provide coverage for medically necessary donor human milk for inpatient use.<sup>3</sup> Donor human milk, as defined by

<sup>1</sup> R.C. 3701.62.

<sup>2</sup> Health benefit plan means a policy, contract, certificate, or agreement offered by a health plan issuer to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including benefit plans marketed in the individual or group market by all associations, whether bona fide or nonbona fide. R.C. 3922.01, not in the bill.

<sup>3</sup> R.C. 3902.63(B) and 5164.072(B).

the bill, is human milk that has been contributed to a milk bank by one or more donors.<sup>4</sup> To be covered under the bill, the milk must be obtained from a milk bank that meets safety standards adopted by the Department of Health, as discussed above.<sup>5</sup>

### **Medical necessity**

Donor human milk is medically necessary under the bill when it is both (1) ordered by a clinical nurse specialist, certified nurse-midwife, certified nurse practitioner, physician, physician assistant, or lactation consultant that is board certified by the International Lactation Consultant Association,<sup>6</sup> and (2) ordered for either of the following:

- --An infant who is medically or physically unable to receive maternal human milk or participate in chest feeding;
- --An infant whose parent is medically or physically unable to produce calorically dense milk in sufficient quantities or participate in chest feeding, if the infant meets various criteria or has certain conditions, including a birth weight below 2,500 grams; a gestational age equal or less than 34 weeks; hypoglycemia; and any serious congenital or acquired condition for which the use of pasteurized donor human milk or donor human milk-derived products is medically necessary and supports the treatment and recovery of the child.<sup>7</sup>

### **Prior authorization permitted**

The bill authorizes health benefit plans and the Medicaid program to impose a prior authorization on donor human milk covered by the bill. If prior authorization is required, an order for donor human milk must be considered an urgent care service, as defined under current law, which requires a quicker response than prior authorizations for nonurgent care services.<sup>8</sup>

### **Insurance-specific provisions**

The bill's insurance donor human milk coverage provisions apply to health benefit plans issued, renewed, or amended on or after the bill's effective date.<sup>9</sup>

There is an argument that by requiring health insurers to cover donor human milk, the bill might establish a mandated health benefit. Current law prohibits General Assembly-mandated health benefits from being applied until the Superintendent of Insurance determines that the provision can be applied fully and equally to employee benefit plans subject to the

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<sup>4</sup> R.C. 3902.63(A)(1).

<sup>5</sup> R.C. 3902.63(D) and 5164.072(D).

<sup>6</sup> R.C. 3902.63(C)(1) and 5164.072(C)(1).

<sup>7</sup> R.C. 3902.63(C)(2) and 5164.072(C)(2).

<sup>8</sup> R.C. 3902.63(E) and 5164.072(E); R.C. 1751.72, 3923.041, and 5160.34, none in the bill.

<sup>9</sup> R.C. 3902.63(B).

federal “Employee Retirement Income Security Act of 1974” (ERISA),<sup>10</sup> and to employee benefit plans established or modified by the state or any of its political subdivisions.<sup>11</sup> The bill exempts its requirements from this prohibition.<sup>12</sup>

### **Medicaid-specific provisions**

The bill authorizes the Medicaid Director to adopt rules to implement the donor human milk coverage provisions.<sup>13</sup>

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## **HISTORY**

Action	Date
Introduced	03-15-22

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<sup>10</sup> 29 United States Code 1001 *et seq.* ERISA is a comprehensive federal statute governing the administration of employee benefit plans. ERISA generally precludes state regulation of benefits offered by private employers that self-insure their benefit programs. Larger employers frequently choose to establish their own health insurance plans for their employees in lieu of purchasing coverage from a sickness and accident insurer or health insuring corporation.

<sup>11</sup> R.C. 3901.71(B), not in the bill.

<sup>12</sup> R.C. 3902.63(B).

<sup>13</sup> R.C. 5164.072(F).