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Bill Analysis

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Version: As Reported by Senate Insurance and Financial Institutions

Primary Sponsor: Sen. Schuring

Nick Thomas, Research Analyst

SUMMARY

- Beginning January 1, 2020, prohibits specified terms from being included in health care contracts between a dental care provider and a contracting entity (any person that has the primary business purpose of contracting with participating providers for the delivery of health care services).
- Prohibits a contracting entity from requiring that a dental care provider accept a payment amount set by the contracting entity for dental care services unless those services are covered services.
- Imposes disclosure requirements on health plan issuers regarding dental care services that are not covered services.
- Makes a violation of the above provisions an unfair and deceptive act in the business of insurance.
- Imposes disclosure requirements on dental care providers regarding dental care services that are not covered.
- Subjects providers who violate the above disclosure requirements to professional discipline.

* This analysis was prepared before the report of the Senate Insurance and Financial Institutions Committee appeared in the Senate Journal. Note that the legislative history may be incomplete.

DETAILED ANALYSIS

Overview

The bill expands current law requirements imposed on contracts entered into between contracting entities and vision care providers to also include contracts entered into between insurers and dental care providers. Note, the current law requirements apply to insurance contracts covering vision care services *and* materials. The bill, however, only applies to contracts that cover dental care services; it does not apply to contracts that cover exclusively dental care materials.

Notifications

The bill imposes disclosure requirements on any health care policy, contract, agreement, or plan of a (1) health insuring corporation, (2) sickness and accident insurer, (3) multiple employer welfare arrangement, or (4) public employee benefit plan (collectively, health plan issuers) covering dental care services. The bill requires the following notification to be made to all individuals covered by such a health benefit plan:

> "IMPORTANT: If you opt to receive dental care services that are not covered benefits under this plan, a participating dental care provider may charge you his or her normal fee for such services. Prior to providing you with dental care services that are not covered benefits, the dental care provider will provide you with an estimated cost for each service."[1]

Similarly, health plan issuers must explain to covered persons that they may incur out-of-pocket expenses as a result of the purchase of dental care services that are not covered. The explanation must be provided in a manner similar to that in which the health plan issuer provides a covered person with information on a health benefit plan's coverage levels and out-of-pocket expenses.[2]

Unfair and deceptive practice

Under continuing law, unchanged by the bill, a continuous or repeated practice of violating these requirements is seen as an unfair and deceptive practice. This classification would also apply to the bill's new requirements related to dental care services.[3] 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;

[1] R.C. 1751.85(B)(2) and 3923.86(B)(2) and R.C. 1739.05, not in the bill.

[2] R.C. 1751.85(B)(4) and 3923.86(B)(4).

[3] R.C. 1751.85(C), 3901.21(BB), and 3923.86(C).

- 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.[4]

Health Contract Law prohibitions

Provider contract terms

For health care contracts entered into, amended, or renewed on or after January 1, 2020, the bill also prohibits specified terms from being included in health care contracts between a dental care provider and a contracting entity (any person that has the primary business purpose of contracting with participating providers for the delivery of health care services).

The bill prohibits a contract between a contracting entity and a dental care provider from doing any of the following:

- Requiring that a dental care provider accept as payment an amount set by the contracting entity for dental care services provided to a covered person, unless the services are covered dental services, subject to the following:
  - A dental care provider may choose to accept as payment an amount set by the contracting entity for dental care services that are not covered services.
  - A contract between a dental care provider and a contracting entity is prohibited from being contingent upon whether the dental care provider has entered into an agreement addressing noncovered dental services.
  - A contracting entity is allowed to communicate to its covered persons which dental care providers choose to accept as payment an amount set by the contracting entity for noncovered dental services. Any such communication must treat all dental care providers equally in provider directories, locators, or other marketing materials as participating, in-network providers, annotated only as to whether or not they accept a payment set by the contracting entity for noncovered services.
- Requiring a dental care provider contract with a benefit plan offering supplemental or specialty health care services as a condition of contracting with a plan offering basic health care services.[5]

[4] R.C. 3901.22, not in the bill.

[5] R.C. 3963.01(D) and (E) and 3963.02(F)(1).

Noncovered services

The bill also imposes requirements on dental care providers regarding dental care services that are not covered services. A dental care provider that chooses not to accept a payment amount set by a contracting entity for noncovered dental services is required to do both of the following:

- Provide pricing and reimbursement information for the noncovered dental care services in question, including all of the following:
  - The estimated fee or discounted price suggested by the contracting entity for the noncovered service;
  - The estimated fee charged by the dental care provider for the noncovered service;
  - The amount the dental care provider expects to be reimbursed by the contracting entity for the noncovered service;
  - The estimated pricing and reimbursement information for any covered services that are also expected to be provided during the covered person's visit.
- Post, in a conspicuous place, a notice stating the following:

> "IMPORTANT: This dental care provider does not accept the fee schedule set by your insurer for dental care services that are not covered benefits under your plan and instead charges his or her normal fee for those services. This dental care provider will provide you with an estimated cost for each noncovered service."[6]

These provisions are not to be construed as doing any of the following:

- Restricting or limiting a contracting entity's ability to enter into an agreement with another contracting entity or an affiliate of another contracting entity;
- Restricting or limiting a health care plan's ability to enter into an agreement with a dental care plan to deliver routine dental care services that are covered under a covered person's plan;
- Restricting or limiting a dental care plan network from acting as a network for a health care plan;
- Prohibiting a participating dental care provider from accepting as payment an amount that is the same as the amount set by the contracting entity for dental care services that are not covered dental services.[7]

[6] R.C. 3963.02(F)(2).

[7] R.C. 3963.02(F)(3).

Furthermore, the bill specifies that continuing law's requirements relating to the termination of health care contracts are not to be construed as authorizing the Superintendent of Insurance to exercise regulatory authority over dental care providers.[8]

Enforcement

Health Care Contract Law

The prohibitions described above under "**Health Care Contract Law prohibitions**" would become part of Ohio's Health Care Contract Law.[9] Continuing law authorizes the Superintendent of Insurance to conduct a market investigation of any person regulated by the Department of Insurance under Ohio's Insurance Law[10] or Ohio's Corporation and Partnership Law[11] to determine whether any violation of the Health Care Contract Law has occurred. When conducting such an examination, the Superintendent can assess the costs of the examination against the person examined.

The Superintendent may enter into a consent agreement to impose any administrative assessment or fine for conduct discovered that may be a violation of the Health Care Contract Law. In addition, a series of violations of the Health Care Contract Law by any person regulated by the Department of Insurance that, taken together, constitute a pattern or practice of violating that Law may constitute an unfair and deceptive insurance practice.[12]

The bill also specifies that a violation of these prohibitions is an unfair or deceptive practice in the business of insurance (see "**Unfair and deceptive practice**" above for a description of possible sanctions).[13]

Professional licensing law

In addition, the bill subjects a dental care provider who engages in a pattern of continuous or repeated violations of the disclosure, pricing, and notice requirements detailed in "**Noncovered services**" above. Discipline may include suspension or revocation of the provider's license to practice dentistry, formal censure, or other corrective actions.[14]

Definitions

The bill makes the following definitions:

[8] R.C. 3963.02(G)(5).

[9] R.C. Chapter 3963.

[10] R.C. Title 39.

[11] R.C. Title 17.

[12] R.C. 3963.09, not in the bill.

[13] R.C. 3901.21(BB).

[14] R.C. 4715.30(A)(18) and (C).

"Covered dental services" means dental care services for which reimbursement is available under an enrollee's health care contract, or for which a reimbursement would be available but for the application of contractual limitations, such as a deductible, copayment, coinsurance, waiting period, annual or lifetime maximum, frequency limitation, alternative benefit payment, or any other limitation.

"Dental care provider" means a dentist licensed by the State Dental Board. "Dental care provider" does not include a dental hygienist.[15]

HISTORY

Action	Date
Introduced	05-13-19
Reported, S. Insurance and Financial Institutions	---

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[15] R.C. 3963.01(E) and (G).