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OHIO LEGISLATIVE SERVICE COMMISSION

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Office

S.B. 305
133rd General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsor: Sen. Craig

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SUMMARY

- Expands coverage of telemedicine services during a declared state of emergency.
- Declares an emergency.

DETAILED ANALYSIS

Overview

The bill amends the law related to insurance coverage for health services provided via telemedicine during declared emergencies. The bill applies to health insuring corporations, sickness and accident insurers, multiple employee welfare arrangements, and public employee benefit plans.

Coverage of telemedicine services

The bill requires, during a state of emergency declared by the Governor or the U.S. President, a health plan issuer, to cover any health service provided as a telemedicine service if both of the following apply:

- The health care service is a covered service;
- It is determined by the health care services provider (see below) that doing so is in the interest of the public.¹

Note that current law already requires health benefit plans to cover telemedicine services, beginning January 1, 2021. The bill expands telemedicine coverage requirements during declared states of emergency as discussed below.

¹ R.C. 3902.30(F)(1)(a).

Reimbursement

Such services would have to be reimbursed at the same rate as in-person services.² The current law, which would apply during any time that was not a declared state of emergency, does not require that telemedicine services be reimbursed at the same rate as in-person services.³

Health care services providers

Also, during a declared state of emergency, the bill expands the number of providers required to receive reimbursement for telemedicine services. Under current law, health plan issuers are required to cover health services provided by a health care professional – physicians, physician’s assistants, and advanced practice nurses.⁴ The bill expands this coverage to include health care services providers – physicians, psychologists, nurse practitioners, or any other health care practitioner licensed, accredited, or certified to diagnose, prevent, treat, cure, or provide relief with regard to a health condition, illness, injury, or disease.⁵

Application

The bill specifies that it is not to be construed as doing any of the following:

- Authorizing a health care services provider to provide health care services outside the provider’s legal scope of practice;
- Requiring a health plan issuer to reimburse a health care services provider for a health care service that is outside the provider’s legal scope of practice;
- Requiring a health plan issuer to provide reimbursement for a health care service that is not a covered service.⁶

Note that the current law requirements apply to health benefit plans issued on or after January 1, 2021. The bill’s new requirement would apply to health benefit plans currently in effect (see **COMMENT**). This is due to several factors. First, the bill is an emergency measure, meaning it would have an immediate effective date. Second, its requirements only apply during a state of emergency declared by the Governor or U.S. President. And third, as of the publication of this analysis, the state of Ohio is under a declared state of emergency declared by the Governor, attributable to COVID-19.⁷

² R.C. 3902.30(F)(1)(b).

³ R.C. 3902.30(E)(3).

⁴ R.C. 3902.30(A)(2) and (3) and (B)(1)

⁵ R.C. 3902.30(A)(3) and 3922.01(O).

⁶ R.C. 3902.30(F)(2).

⁷ R.C. 3902.30(E) and Section 3.

COMMENT

The bill's requirement that already existing policies of insurance provide additional coverage not already required under the policy might raise some constitutional questions. These matters are discussed below.

Contracts clause

Under the Contracts Clauses of the U.S. and Ohio Constitutions, the General Assembly is prohibited from enacting laws that impair contractual obligations. These prohibitions are not absolute, however. They do not absolutely prevent a state from abridging contractual obligations when exercising its police power and passing laws for the protection of public health, safety, and welfare. Rather, they prohibit a "substantial" impairment of contractual obligations unless the state can *justify the impairment on the basis of an overriding public interest and the impairing measure is appropriately tailored to serve that interest*.⁸

Retroactivity

Imposing a new requirement on existing contracts might be viewed as retroactive legislation. The Ohio Constitution provides that the General Assembly has no power to pass retroactive laws. This provision prohibits laws imposing new substantive duties and obligations on a person's past conduct and transactions. Remedial laws, however, can be applied retroactively. A remedial law affects only the remedy provided and includes laws that merely substitute a new or more appropriate remedy for the enforcement of an existing right. Laws relating to procedures are ordinarily remedial in nature.⁹

HISTORY

Action	Date
As Introduced	04-29-20

S0305-I-133/ar

⁸ U.S. Constitution, Article I, Section 10; Ohio Constitution, Article II, Section 28; *Westfield Ins. Co. v. Galatis*, 100 Ohio St.3d 216, 2003-Ohio-5849; *City of Middletown v. Ferguson*, 25 Ohio St.3d 71 (1986), *cert. denied*, *Sticklen v. Middletown*, 479 U.S. 1034 (1987); and *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234 (1978).

⁹ Ohio Const., Art. II, Sec. 28; *State v. White*, 132 Ohio St.3d 344, 2012-Ohio-2583; *Rubbermaid, Inc. v. Wayne County Auditor*, 95 Ohio St.3d 358, 2002-Ohio-2338; *Bd. of Educ. of the Cincinnati Sch. Dist. v. Hamilton County Bd. of Revision*, 91 Ohio St.3d 308, 2001-Ohio-46; *Lakengren, Inc. v. Kosydar*, 44 Ohio St.2d 199 (1975); and *Kumler v. Silsbee*, 38 Ohio St. 445 (1882).