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S.B. 252*
133rd General Assembly

Bill Analysis

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Version: As Reported by House Health

Primary Sponsors: Sens. Hackett and Craig

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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 bill 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 bill applies to health insuring corporations, sickness and accident insurers, multiple employee welfare arrangements, and public employee benefit plans.¹

Fail first

The bill 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 upon either of the following:

* This analysis was prepared before the report of the House Health Committee appeared in the House Journal. Note that the legislative history may be incomplete.

¹ R.C. 3902.50(B) and (C) and R.C. 3922.01, not in the bill.

- Failure to successfully respond to a different drug;
- 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, as applicable, 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 bill'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 R.C. 3901.71, 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 the provision 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," (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 bill contains provisions that exempt its requirements from this restriction.⁴

² R.C. 3902.51(A) and (B).

³ R.C. 3902.51(C) and R.C. 3901.22, not in the bill.

⁴ R.C. 3902.51(A).

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	---
