



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

Audra Tidball

S.B. 253

132nd General Assembly
(As Introduced)

Sens. Tavares, Yuko, Thomas, Sykes, Skindell, Schiavoni

BILL SUMMARY

- Limits the amount that may be paid or reimbursed for a prescription drug or item of medical equipment to the amount the United States Department of Veterans Affairs (VA) pays or reimburses for the same drug or item.
 - Applies the limit to (1) state departments, agencies, and entities, (2) state retirement systems, (3) public employee benefit plans, (4) Ohio's Medicaid Program, and (5) health insurers.
 - Requires the Department of Administrative Services (DAS) to create and quarterly update a state medical item formulary that contains (1) all prescription drugs and items of medical equipment available at VA facilities and (2) the per unit price paid by the VA for each drug or item.
 - Requires DAS, the Superintendent of Insurance, and the Executive Director of the Office of Health Transformation to monitor compliance with the bill.
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CONTENT AND OPERATION

Prescription drug and medical equipment prices

Generally, the bill prohibits making a payment or reimbursement or otherwise providing benefits for a prescription drug or item of medical equipment in an amount in excess of the payment, reimbursement, or benefit provided by the United States Department of Veterans Affairs (VA) for the same drug or item on a per unit basis.¹ The prohibition applies to all of the following:

¹ R.C. 125.942(A), 3962.02(A), 5164.7512(B), and 5167.12(D)(3).

(1) State agencies – a state department, agency, or entity;²

(2) Retirement systems – the state's five public retirement systems: the Public Employees Retirement System, State Teachers Retirement System, School Employees Retirement System, State Highway Patrol Retirement System, and Ohio Police and Fire Pension Fund;³

(3) Public employee benefits plans – a public employee benefit plan or other insurance or pharmacy benefit plan offered by a state department, agency, or entity or by a state retirement system;⁴

(4) Medicaid – the Department of Medicaid and Medicaid managed care organizations;⁵

(5) Health insurers – the following health insurers: a provider of sickness and accident insurance, a health insuring corporation, a multiple employer welfare arrangement, and any other entity that is obligated by a benefits contract to pay or reimburse for covered health services rendered to beneficiaries under the contract (see **COMMENT** below).⁶

State medical item formulary

To facilitate the prohibition, the bill requires the Department of Administrative Services (DAS) to create a state medical item formulary. The state formulary must (1) contain all prescription drugs and items of medical equipment on the VA national formulary and (2) for each drug or item on that formulary, specify the per unit price the VA pays, reimburses, or otherwise provides benefits for.⁷ The "VA national formulary" is defined by the bill as the list containing the prescription drugs and medical equipment that must be available for prescription at all VA facilities and are generally covered under VA pharmacy benefits.⁸

² R.C. 125.942(A)(1) and (2)(a).

³ R.C. 125.942(A)(2)(b) and 125.94(B).

⁴ R.C. 125.942(A)(2)(c).

⁵ R.C. 5164.7512(B) and 5167.12(D)(3).

⁶ R.C. 3962.01(A) and 3962.02(A).

⁷ R.C. 125.941(A).

⁸ R.C. 125.94(C).



DAS must quarterly review the state formulary and update it as necessary to reflect changes to the VA national formulary.⁹

Compliance

The bill requires monitoring of compliance with its provisions. Not later than December 1 each year, reports summarizing findings from the monitoring efforts must be submitted to the Governor and the General Assembly. The following are subject to the bill's compliance monitoring provisions:

(1) DAS, regarding compliance by state departments, agencies, and entities; state retirement systems; and public employee benefit plans;¹⁰

(2) The Superintendent of Insurance, regarding compliance by health insurers;¹¹

(3) The Executive Director of the Office of Health Transformation, regarding compliance by the Department of Medicaid and Medicaid managed care organizations.¹²

COMMENT

Due to federal law, the bill will not apply to coverage of individuals who are (1) covered by benefit plans (including health plans) regulated under the Employee Retirement Income Security Act of 1974 (ERISA)¹³ or (2) federal employees participating in the Federal Employees Health Benefits Program.¹⁴ The bill also does not apply to individuals who pay for prescription drugs and medical equipment without using an insurance benefit.

⁹ R.C. 125.941(B).

¹⁰ R.C. 125.942(B).

¹¹ R.C. 3962.02(B).

¹² R.C. 5164.7512(C).

¹³ 29 United States Code (U.S.C.) 1144(a) (voiding all laws to the extent that they relate to employer-sponsored health plans). The U.S. Supreme Court has held that ERISA preempts state laws that have a connection with or that refer to ERISA plans (i.e., all plans offered by private-sector employers) (*District of Columbia v. Greater Washington Bd. of Trade*, 506 U.S. 125, 129 (1992)).

¹⁴ 5 U.S.C. 8902(m)(1). Under the Federal Employee Health Benefits Act, the terms of a plan in the program that provides health care coverage to federal employees supersede and preempt any state law and associated regulation that relates to health insurance or plans.



HISTORY

ACTION

DATE

Introduced

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