



Ohio Association of Health Underwriters
Legislative Update
September 14, 2009
Prepared by John T. McGough

OAHU Summary of Final Version of State Budget

General Overview

After three one-week interim budgets were passed to keep state government running, on July 17, 2009 Governor Strickland signed the state's biennial budget (H.B. 1) into law. H.B. 1 will fund state government from July 17, 2009 – June 30, 2011.

Below is OAHU's summary of the health insurance related provisions included in the final version of the budget (H.B. 1):

Health Insurance related provisions

- **Individual Market Open Enrollment for Uninsurable persons – applies to HICs, federally eligible (FEI) and non-federally eligible individuals (non-FEI) – ORC Sections 1751.15, 1751.16, 1751.18, 3923.122, 3923.58, 3923.581 and 3923.582**
 - Open enrollment rates for basic and standard plans for Health Insuring Corporations (HICs) and Sickness and Accident Insurers (health insurers) for individuals and non-employer groups are capped at 2 times the base rate for calendar years 2010 and 2011. The “base rate” is defined as the lowest premium rate for new or existing business prescribed by a HIC or health insurer for the same or similar coverage under a plan or arrangement covering any individual with similar case characteristics.
 - For calendar year 2012 and every year thereafter, rates capped at 1 ½ times the base rate.
 - However, if ODI determines that the 2010 cap has resulted in a market-wide average medical loss ratio for coverage sold to individual insureds and non-employer group insureds, including open enrollment insureds, of more than 5.25 percentage points, the 2010 and 2011 cap shall remain in effect.
 - During 2010 and 2011, each carrier shall accept into open enrollment up to 4% FEIs and 4% non-FEIs of the carrier's total number of individual or non-employer group insureds in this state; for 2012 each carrier shall accept up to 8% FEIs and 8% non-FEIs.

- HICs will no longer have to issue a public notice in the newspaper announcing their open enrollment period.
 - Both HICs and insurers allowed to have pre-existing condition clauses (6 month look-back, 12 month look forward).
 - A carrier may pay an agent a commission of not more than 5% of the premium charged for the initial placement and not more than 4% of the premium charged on renewal.
 - These new open enrollment provisions become effective January 1, 2010.
- **State Continuation of Coverage – ORC Sections 1751.53 and 3923.38**
 - Makes permanent the changes made in H.B. 2 (the Transportation Budget) that were set to expire January 1, 2010.
 - Coverage permanently extended from 6 to 12 months.
 - Effective for policies and contracts issued, delivered or renewed on or after April 1, 2009.
- **External Review of Health Care Denials – ORC Sections 1751.831, 1751.84, 3923.66, 3923.67, 3923.68, 3923.75, 3923.76 and 3923.77**
 - Requires a HIC to cover a health care service if the Supt. of Insurance determines it is a covered service.
 - Requires HICs and health insurers to initiate an external review automatically (without a request from insured) upon receiving such notification from Supt. of Insurance.
 - Allows HICs and health insurers to deny an insured’s request for an external review if request is not made within 180 days.
 - Effective date October 16, 2009.
- **Payment of Claims by Third Party Payers – ORC Section 3901.381**
 - Requires third party payers to pay claims electronically when claim was received electronically and prohibits providers from refusing to accept electronic payments.
 - Effective date October 16, 2010.
- **Administrative Expenses of Health Plans/Premium Rate Filings – ORC Sections 3923.021, 3924.06 and 3923.022**
 - Changes the definition of “Administrative Expenses” to include premiums earned rather than received and includes the amount of losses recovered from reinsurance coverage, certain “incurred” state fees rather than “paid”, and the “incurred” costs related to payment of commissions.
 - Administrative Expense Statements must itemize and separately detail eight different costs incurred for the insurer’s individual, small group and large group business.
 - Requires filing of small employer premium rates (HICs and insurers).
 - Requires filing of premium rates for any individual policy of sickness and accident insurance or individual policies sold through a group policy.
 - Effective date October 16, 2009.

- **Coverage of Dependent Children – ORC Sections 1739.05, 1751.14, 3923.24, 3923.241, 5747.01**
 - Requires insurers to offer dependent coverage to an unmarried child until the child attains 28 years of age, (but does not require the employer to pay for any part of the dependent’s premium) if all of the following are true:
 - The child is the natural child, stepchild, or adopted child of the subscriber;
 - The child is a resident of Ohio or a full-time student at an accredited public or private institution of higher education;
 - The child is not employed by an employer that offers any health benefit plan under which the child is eligible for coverage;
 - The child is not eligible for coverage under Medicaid or Medicare.
 - A dependent child qualifies to continue on the coverage when attaining 28 years of age if both of the following apply:
 - The child is incapable of self-sustaining employment by reason of mental retardation or physical handicap, and
 - The child is primarily dependent upon the subscriber for support and maintenance.
 - Effective for policies and contracts issued, delivered or renewed on or after July 1, 2010.
- **Section 125 Cafeteria Plans – ORC Section 4113.11**
 - Requires employers with 10 or more employees to adopt and maintain cafeteria plans that allow the employer’s employees (who work 25 hours or more per week) to pay for health insurance coverage by a salary reduction arrangement under the Internal Revenue Code.
 - Employers shall comply based on the following timelines:
 - More than 500 employees – not later than January 1, 2010, or 6 months after Supt. of Insurance adopts rules, whichever is later;
 - 150 – 500 employees – not later than January 1, 2011, or 12 months after rules adopted, whichever is later.
 - 10 – 149 employees – not later than January 1, 2012, or 18 months after rules adopted, whichever is later.
 - Requires Supt. of Insurance to receive written confirmation from the federal government that the individual policies purchased under cafeteria plans do not need to comply with HIPAA requirements for group policies. If the confirmation is not received then the requirement that the employers provide cafeteria plans does not apply.
 - The cafeteria plan requirement does not apply to employers that, through other means than provided under this section, offer health insurance coverage, reimburse for health insurance coverage, or provide employees with opportunities to pay for health insurance with pre-tax dollars through other salary reduction arrangements.
- **Health Care Coverage and Quality Council – ORC Sections 3923.90, 3923.91, 5111.141, 5111.142, and 5111.165**
 - Codifies into law the Council which was created in March 2009 in an Executive Order by Governor Strickland to advise the Governor and General Assembly, public and private entities and consumers on strategies to expand affordable health insurance

coverage to more individuals and improve the cost and quality of Ohio's health care system.

- **Autism mandate**
 - Removed provisions mandating coverage of Autism.

- **Children's Buy-In Program – Eligibility – ORC Sections 5101.5212 and 5101.5213**
 - Family income must exceed 300% of federal poverty level, meaning the child cannot qualify for CHIP.
 - Revised eligibility requirements to this existing program as follows: Child has not had creditable coverage for 3 months, however, requirement is not applicable if **both** of the following apply: (1) the child's parents are involuntarily unemployed; at least one parent is unable to work due to a disabling condition; at least one parent involuntarily lost creditable coverage for the child; **or** the child has creditable coverage under COBRA continuation coverage; **and** (2) the cost of the least expensive creditable coverage available to the child is greater than 10% of the child's countable family income; the premium for the creditable coverage with the lowest premium available to the child is greater than 150% of the premium applicable to the child under the children's buy-in program; the child is unable to obtain creditable coverage due to a pre-existing condition; the child lost the only creditable coverage available because the child has exhausted a lifetime benefit limitation; **or** the child participates in the program for medically handicapped children.

Newly Introduced Legislation

H.J.R. 3 (Maag & Sears) – Health Care Constitutional Amendment

On August 26, 2009 Representatives Ron Maag (R-Lebanon) and Barbara Sears (R-Sylvania) introduced House Joint Resolution 3 to amend Ohio's Constitution to prohibit a law or rule from compelling a person, employer, or health care provider to participate in a health care system.

S.B. 159 (R. Miller) – Health Insurer Prohibition

Senator Ray Miller (D-Columbus) introduced S.B. 159 on August 6, 2009 to prohibit health insurers from denying payment for a service during or after the performance of the service if the insurer provided prior authorization for the service. The bill has not been referred to a committee.

H.B. 256 (Gardner) – Small Business Health Care

On July 23, 2009 Representative Randy Gardner (R-Bowling Green) introduced H.B. 256 to create the Small Business Health Care Affordability Task Force to look at tax incentives for businesses, incentives for businesses to offer health wellness and disease prevention programs, what other states are doing in this area, and consider federal legislation regarding the provision of health insurance by small businesses and then report its findings and any recommendations to the Speaker and Minority Leader of the House, the president and Minority leader of the Senate and governor not later than six months following its initial organizational meeting. The Task Force is comprised of three House and three Senate members and up to five additional members who represent small business employers or employees or who are otherwise relevant to the duties of the Task Force. The bill has not been referred to a committee.

S.B. 154 (Patton) – Pharmacy Benefit Manager Prohibition

On July 8, 2009 Senator Tom Patton (R-Strongsville) introduced S.B. 154 to prohibit a pharmacy benefit manager that has a relationship (ownership or under their control) with a retail pharmacy from using that relationship to the competitive disadvantage of other retail pharmacies, including allowing coverage of covered drugs dispensed by that retail pharmacy but not by other retail pharmacies. The bill has been referred to the Senate Insurance, Commerce & Labor Committee.

H.B. 198 (Lehner & Ujvagi) – Medical Home Demonstration Project

On June 2, 2009 Representatives Peggy Lehner (R-Kettering) and Peter Ujvagi (D-Toledo) introduced H.B. 198 to establish the Medical Home Model Demonstration Project and to provide for Choose Ohio First Scholarships to be awarded to medical students who agree to practice primary care in Ohio. The legislation contemplates the demonstration project being conducted in Montgomery and Lucas Counties. The bill has received two hearings in the House Healthcare Access & Affordability Committee.

H.B. 240 (Sears) – Medicaid Program

On June 23, 2009 Representative Barbara Sears (R-Sylvania) introduced H.B. 240 to require ODJFS to do the following things: (1) Issue a report on its efforts to minimize waste, fraud and abuse, (2) Create an alternative care management program, (3) create a disease management component of Medicaid and (4) impose a surety bond requirement on certain Medicaid providers. In addition, the bill requires local Medicaid agencies to report their costs associated with operating the Medicaid program. The bill has been referred to the House Health Committee.

S. B. 136 (R. Miler) - Telemedicine

On June 16, 2009 Senator Ray Miller (D-Columbus) introduced H.B. 136 to require health insurers and the Medicaid program to provide coverage for telemedicine services in the same manner that coverage is provided for face-to-face consultations. The bill has been referred to the Senate Insurance, Commerce & Labor Committee.

S.B. 137 (R. Miller) – Prompt Pay

Senator Ray Miller (D-Columbus) introduced S.B. 137 on June 16, 2009 to specify that Ohio's prompt pay law applies to Medicaid Managed Care Plans. The bill has been referred to the Senate Health, Human Services & Aging Committee.

S.B. 138 (R. Miller) – Cancer Medications

On June 16, 2009 Senator Ray Miller introduced S.B. 138 to require health insurers that provide coverage for cancer chemotherapy treatment to provide coverage for certain prescribed, orally administered anti-cancer medications on a basis no less favorable than intravenously administered or injected cancer medications that are covered under the health insurance policy. The bill has been referred to the Senate Insurance, Commerce & Labor Committee.

S.B. 133 (Gillmor) H.B. 237 (Newcomb) – (Cancer Medications)

On June 10, 2009 and June 23, 2009 Senator Karen Gillmor (R-Tiffin) and Representative Deborah Newcomb (D-Conneaut) introduced S.B. 133 and H.B. 237, respectively, which would do the following:

- (1) Prohibit health insurance contracts that provide coverage for cancer chemotherapy treatment from providing coverage for a prescribed, orally administered cancer medication on a less favorable basis than coverage for intravenously administered or injected cancer medications.

- (2) Prohibit health insurance contracts that provide coverage for non-self-injectable medications, medications that must be compounded immediately prior to administration, or both, from doing either of the following:
 - a. Requiring an enrollee to take possession of such a medication from a pharmacy that is a retail seller, or
 - b. Giving an enrollee the option of having such a medication delivered directly to the enrollee by mail or any means of commercial shipment.

S.B. 133 has been referred to the Senate Insurance, Commerce & Labor Committee and H.B. 237 has been referred to the House Healthcare Access & Affordability Committee.

Active Pending Legislation

H.B. 8 (Celeste & Garland) – Autism Coverage

Representatives Ted Celeste (D-Grandview Heights) and Nancy Garland (D-New Albany) introduced H.B. 8 to prohibit health insurers from excluding coverage for specified services for individuals diagnosed with autism spectrum disorder. This legislation is one of the priority bills for the House Democrat Caucus. The bill passed out of the House Healthcare Access & Affordability Committee on March 31st. Provisions similar to H.B. 8 were included in the House-passed version of the budget bill but were removed in the Senate and were not included in the final version of the budget.

H.B. 81 (Boyd & Gardner) Diabetes Coverage Mandate

On March 18, 2009 Representatives Barbara Boyd (D-Cleveland Heights) and Randy Gardner (R-Bowling Green) introduced H.B. 81 to require health insurers to provide coverage for diabetes supplies, equipment, medications and education. The bill passed out of the House Health Committee on June 16, 2009.

H.B. 122 & S.B. 98 (Boyd & T. Patton) – Physician Designations Protections

On April 4 and April 8, 2009, Representative Barbara Boyd (D-Cleveland Heights) and Senator Tom Patton (R-Strongsville), introduced H.B. 122 and S.B. 98, respectively, to place various requirements on health insurers that operate a system for physician designations including what must be considered in the evaluations, disclosure requirements, appeal rights and legal remedies against an insurer if a provider is adversely affected by a violation of the requirements. H.B. 122 has received two hearings the House Health Committee and S.B. 98 has been referred to the Senate Insurance, Commerce & Labor Committee.

H.B. 185 (DeGeeter & Book) – Material Amendments to Contracts

On May 19, 2009 Representatives Tim DeGeeter (D-Parma) and Todd Book (D-Portsmouth) introduced H.B. 185 to specify that a material amendment to a health care contract does not become part of the contract unless agreed upon by both parties. The bill passed out of the House Civil & Commercial Law Committee on June 30, 2009.

S.B. 89 (Morano) – Advanced Practice Nurses Prescriptive Authority

On April 1, 2009 Senator Sue Morano (D-Lorain) introduced S.B. 89 to authorize out-of-state advanced practice nurses with prescriptive authority to obtain prescriptive authority in Ohio without completing an externship if they meet certain criteria. The bill passed the Senate on July 13, 2009.

Cancer Related Legislation

H.B. 134, H.B. 135, & H.B. 136 (DeBose) – Mandatory Offering – Cancer Screenings

On April 16, 2009 Representative Michael DeBose (D-Cleveland) introduced three bills relating to various cancer screenings. All three bills would require that insurers offer to provide, as a supplemental health care service, benefits for the expenses of examinations and laboratory test for certain cancers. The offering must be to “any nonsymptomatic individual” and the examinations and tests offered must be in accordance with the most recently published American Cancer Society Guidelines. H.B. 134 relates to prostate, colorectal, ovarian and cervical cancer screenings; H.B. 135 relates to prostate cancer screenings; and H.B. 136, which also has Representative Lorraine Fende (D-Willowick) as a principal sponsor, relates to ovarian cancers screenings. All three bills have received sponsor testimony in the House Healthcare Access & Affordability Committee.

H.B. 51 (Miller) – Breast Cancer

Representative Eugene Miller (D-Cleveland) introduced H.B. 51 on February 26, 2009 to create the Triple Negative Breast Cancer Commission. The commission would promote the study of this cancer which is defined as “the subtype of breast cancer characterized by cells that lack receptors for the hormones estrogen and progesterone and the protein receptor known as the human epidermal growth factor receptor2, or HER2, and therefore cannot be treated with breast cancer drugs that target these receptors, including such drugs as tamoxifen and trastuzumab”. The bill has been referred to the House Health Committee.

H.B. 56 (Miller) – Colorectal Cancer Screenings

On March 3, 2009 Representative Eugene Miller (D-Cleveland) introduced H.B. 56 to require health insurers to provide benefits for colorectal exams and laboratory tests for cancer in accordance with the most recent published guidelines of the American Cancer Society. The bill received its second hearing in the House Insurance Committee on May 20th.

S.B. 64 – (Coughlin) - Colorectal Cancer Screenings

Senator Kevin Coughlin (R-Cuyahoga Falls) introduced S. B. 64 on March 4, 2009 to require health insurers to cover colorectal cancer screenings. The bill, which is the same as S.B. 278 which passed the Senate last session, specifies the specific colorectal cancer screenings which insurers must cover. The bill has been referred to the Senate Insurance, Commerce & Labor Committee.

Other Pending Legislation

H.B. 125 (Williams) – Establish Family Health Plus Component of Medicaid Program

On April 8, 2009 Representative Sandra Williams (D-Cleveland) introduced H.B. 125 to require the Director of Job and Family Services to seek a federal Medicaid waiver to establish the Family Health Plus component of the Medicaid program, and imposes an assessment on hospitals to help fund the program. The program establishes criteria to allow individuals 18 – 64 whose income or resources exceed the Medicaid program’s eligibility requirements to qualify for health care coverage under the Medicaid Family Plus component. The bill has been referred to the House Healthcare Access & Affordability Committee.

H.B. 146 (Hagan) – Authorize Counties to Participate in State Employee Plan

On April 22, 2009 Representative Bob Hagan (D-Youngstown) introduced H.B. 149 to authorize county officers and employees to participate in the state employee health insurance plan sponsored by the Ohio Department of Administrative Services. The bill has been referred to the House Insurance Committee.

H.B. 159 (Skindell & Hagan) – Establish Government-run Health Insurance System

Representatives Michael Skindell (D-Lakewood) Bob Hagan (D-Youngstown) jointly introduced H.B. 159 to establish a single-payer health care system for Ohio. The bill has received sponsor testimony in the House Healthcare Access & Affordability Committee.

S.B. 15 (D. Miller) – Enhanced Mental Health Parity

On February 10, 2009 Senator Dale Miller (D-Cleveland) introduced S.B. 15, the “enhanced mental health parity” legislation that mandates coverage for the diagnosis and treatment of all mental illnesses and substance abuse and drug addictions. It has been referred to the Senate Health, Human Services & Aging Committee.

S.B. 25 (Schaffer) – Deductibility of Medical Expenses

On February 10, 2009 Senator Tim Schaffer (R-Lancaster) introduced S.B. 25 to authorize the deduction of unreimbursed medical expenses to the extent the expenses exceed 1% of federal adjusted gross income. The current standard is unreimbursed expenses that exceed 7.5%. The bill received sponsor testimony in Senate Ways & Means & Economic Development Committee on February 18th.

S.B. 34 (D. Miller) – Group Health Insurance

Senator Dale Miller (D-Cleveland) introduced S.B. 34 on February 10, 2009 to require the Ohio Department of Administrative Services to create a health insurance program that allows municipalities, small employers and nonprofit corporations or associations to purchase for their employees the same policies provided to state employees. The bill has been referred to the Senate Insurance, Commerce & Labor Committee.

S.J.R. 2 (Coughlin) – Health Care Resolution

On February 24, 2009 Senator Kevin Coughlin (R-Cuyahoga Falls) introduced Senate Joint Resolution 2 to enact Section 43 of Article II of the Ohio Constitution to provide rights to people to enter into private contracts with health care providers for health care services and to purchase private health care coverage. The resolution has been referred to the Senate Insurance, Commerce & Labor Committee.