



# Ohio Legislative Service Commission

## Bill Analysis

Elizabeth Molnar

### **Am. S.B. 99\***

130th General Assembly  
(As Reported by H. Health & Aging)

**Sens.** Oelslager and Tavares, Brown, Cafaro, Gardner, Hite, Kearney, Lehner, Schiavoni, Smith, Turner, LaRose, Manning, Skindell, Gentile, Burke, Eklund, Hughes, Jones, Obhof, Sawyer, Uecker

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### **BILL SUMMARY**

- Prohibits health insurance provided by certain insurers from providing less favorable coverage for orally administered cancer medication than for intravenously administered or injected cancer medications.
- Prohibits an insurer from complying with the bill by increasing cost sharing for orally administered, intravenously administered, or injected cancer medications.
- Provides that an insurer is deemed in compliance with the bill if the cost sharing imposed for orally administered cancer treatments does not exceed \$100 per prescription fill.
- Exempts an insurer from complying with the bill if it can be shown that compliance, over a period of at least six months, would justify an increase of more than 1% in premiums for basic health care services.
- Applies similar cancer medication coverage requirements to the Medicaid program.
- Designates the bill as the "Robert L. Schuler Act."

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\* This analysis was prepared before the report of the House Health and Aging Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

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## CONTENT AND OPERATION

### Overview

Except when costs incurred by an insurer exceed certain limits specified in the bill, the bill requires that prescribed orally administered cancer medication be given no less favorable coverage than intravenously administered or injected cancer medications under a health insurance policy, contract, agreement, or plan. The insurers subject to the bill are health insuring corporations, sickness and accident insurers, multiple employer welfare arrangements, and public employee benefit plans. Medicaid coverage of cancer medications is also included under the bill, but is treated slightly differently.

The bill applies to policies, contracts, agreements, and plans that are delivered, issued for delivery, renewed, established, or modified in Ohio on or after January 1, 2015. Medicaid coverage also is to begin January 1, 2015.

The bill does not apply to health insurance that is part of employee benefits offered by private employers that self-insure their benefit programs. These programs are generally precluded from state regulation by the federal Employee Retirement Income Security Act (ERISA) (see "**ERISA**," below).<sup>1</sup>

### Coverage for chemotherapy treatment

Under the bill, if a plan provides coverage for cancer chemotherapy treatment, an insurer is prohibited from providing coverage or imposing cost sharing for prescribed, orally administered medication that is less favorable than the coverage provided or cost sharing imposed for intravenously administered or injected medications.<sup>2</sup> The bill does not specify the meaning of coverage that is less favorable or how a determination of less favorable coverage is to be made.

For sickness and accident insurers, the bill specifies that the coverage requirement does not apply to any policy providing coverage for specific diseases or accidents only, or to any hospital indemnity, Medicare supplement, disability income, or other policy that offers only supplemental benefits.<sup>3</sup>

The bill prohibits an insurer from complying with the coverage requirement by imposing an increase in cost sharing solely for orally administered, intravenously

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<sup>1</sup> Sections 3 and 5.

<sup>2</sup> R.C. 1739.05(B), 1751.69(B)(1), and 3923.85(B)(1).

<sup>3</sup> R.C. 3923.85(D)(2).

administered, or injected cancer medications. The bill defines "cost sharing" as the cost to an individual according to any coverage limit, copayment, coinsurance, deductible, or other out-of-pocket expense requirements imposed by an insurer.<sup>4</sup>

### **Permissible cost sharing**

The bill provides that an insurer is deemed in compliance with the coverage requirement if the cost sharing imposed for orally administered cancer treatments does not exceed \$100 per prescription fill.<sup>5</sup> The bill does not define "prescription fill."

### **Exemption**

The bill exempts an insurer from complying with the coverage requirement if all of the following apply:

- The insurer submits to the Superintendent of Insurance documentation certified by an actuary showing that compliance with the bill for a period of at least six months caused the insurer's costs for claims and administrative expenses to increase by more than 1% per year;
- The insurer submits to the Superintendent a letter signed by an actuary opining that the increase in costs could reasonably justify an increase of more than 1% in the annual premiums charged for the coverage of basic health services;
- The Superintendent, based on such documents, determines that compliance with the bill caused the insurer's costs for claims and administrative expenses for the coverage of basic health care services to increase more than 1% per year;
- The Superintendent further determines that the increase in costs justifies an increase of more than 1% in the annual premiums charged for basic health care services.

The bill specifies that any such determination made by the Superintendent is subject to the Administrative Procedure Act (R.C. Chapter 119).<sup>6</sup>

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<sup>4</sup> R.C. 1751.69(A) and 3923.85(A).

<sup>5</sup> R.C. 1739.05(B), 1751.69(C), and 3923.85(C).

<sup>6</sup> R.C. 1739.05(B), 1751.69(E), and 3923.85(E).

## **Prior authorization**

The bill specifies that its coverage requirement and associated prohibitions do not preclude an insurer from requiring prior authorization before orally administered cancer medications are dispensed to a covered person.<sup>7</sup>

## **Medicaid coverage**

The bill requires that the Medicaid program cover prescribed, orally administered cancer medications on at least the same basis that it covers intravenously administered or injected cancer medications and prohibits the Department of Medicaid from instituting cost sharing requirements for prescribed, orally administered cancer medications that are greater than any cost sharing requirements instituted for intravenously administered or injected cancer medications.<sup>8</sup>

The bill also provides that the Department is not precluded from requiring a Medicaid recipient to obtain prior authorization before a prescribed, orally administered cancer medication is dispensed to the recipient.<sup>9</sup>

The bill provides that the Medicaid coverage requirement does not apply for a fiscal year if the Medicaid Director determines that it would cause the costs of the Medicaid program's coverage of prescribed drugs to increase by more than 1% over such costs for the most recent previous fiscal year for which the amount of such costs is known.<sup>10</sup>

## **Mandated health benefits legislation**

The bill's requirements regarding coverage of cancer medications by insurers could be considered mandated health benefits. Under current law, no mandated health benefits legislation enacted by the General Assembly may be applied to any policy, contract, plan, or other arrangement providing sickness and accident or other health benefits until the Superintendent determines, pursuant to a hearing conducted in accordance with the Administrative Procedure Act, that the provision can be applied fully and equally in all respects to (1) employee benefit plans subject to regulation by

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<sup>7</sup> R.C. 1739.05(B), 1751.69(D), and 3923.85(D)(1).

<sup>8</sup> R.C. 5162.20(A) and 5164.09(A).

<sup>9</sup> R.C. 5164.09(B).

<sup>10</sup> R.C. 5164.09(C).



the federal Employee Retirement Income Security Act of 1974 (ERISA) and (2) employee benefit plans established or modified by the state or its political subdivisions.<sup>11</sup>

The bill includes provisions that exempt its requirements regarding coverage of cancer medications from review by the Superintendent. Therefore, the coverage may be implemented without a hearing and determination that the coverage can be applied to employee benefit plans subject to ERISA.<sup>12</sup>

## **ERISA**

ERISA is a comprehensive federal statute governing the administration of employee benefit plans. ERISA generally precludes state regulation of benefits offered by private employers that self-insure their benefit programs. Larger employers frequently choose to establish their own health insurance plans for their employees in lieu of purchasing coverage from sickness and accident insurer or health insuring corporation.

## **Act designation**

The bill provides that it is to be known as the "Robert L. Schuler Act."<sup>13</sup> Robert L. Schuler served as a member of both the Ohio House of Representatives and Ohio Senate.

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>
Introduced	04-09-13
Reported, S. Insurance & Financial Institutions	12-05-13
Passed Senate (31-1)	03-12-14
Reported, H. Health & Aging	---

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<sup>11</sup> R.C. 3901.71, not in the bill.

<sup>12</sup> R.C. 1751.69(B) and 3923.85(B).

<sup>13</sup> Section 4.

