



Greg Schwab

Bill Analysis
Legislative Service Commission

H.B. 215

125th General Assembly
(As Introduced)

Reps. Schmidt, Schneider, White, Collier, Peterson, Hollister, Kearns, Wagner, Faber, Gibbs, DeWine, Flowers, Taylor, Setzer, Raga, Reidelbach, Wolpert, Webster, Aslanides, Raussen, Daniels, Carmichael, Blasdel

BILL SUMMARY

- Allows either party to a medical claim to require the medical claim to be reviewed by a medical review panel prior to proceeding in court.

CONTENT AND OPERATION

Medical review panels to hear medical claims; definitions

(secs. 2323.45(A) to (C), 2323.451, and 2323.4520)

The bill requires a healthcare provider to notify the Superintendent of Insurance when a civil action asserting a medical claim against the provider is commenced. Not earlier than 20 days after the provider notifies the Superintendent, either party to the claim may request the formation of a medical review panel by serving notice by certified mail upon all parties and the Superintendent.

Medical claims against providers must be reviewed by medical review panels if either party to the claim requests a review, unless the plaintiff and provider either have: (1) entered into a valid and enforceable contract that requires binding arbitration of medical claims, under section 2711.22 of the Revised Code, or (2) agreed to submit to nonbinding arbitration under section 2711.21 of the Revised Code. Medical review panels must review medical claims if requested to do so, and render an expert opinion prior to a civil action proceeding on the claim.

For purposes of the bill, a "medical claim" is any claim asserted in any civil action against a provider, arising out of the medical diagnosis, care, or treatment of any person. A "medical claim" includes derivative claims for relief and claims

resulting from acts or omissions in providing medical care or in the hiring, training, supervision, retention, or termination of caregivers. A "provider" is defined as "a physician, podiatrist, hospital, home, or residential facility, an employee or agent of a physician, podiatrist, hospital, home, or residential facility, a licensed practical nurse, registered nurse, advanced practice nurse, physical therapist, physician assistant, emergency medical-technician, emergency medical technician-intermediate, or emergency medical technician-paramedic."

Membership of medical review panels; selection process

(secs. 2323.452(A) and (B) and 2323.453 to 2323.457)

The bill requires that medical review panels consist of one attorney and three providers. The attorney member serves as the chairperson of the panel and in an advisory capacity, but has no vote.

Attorney member

The parties to a medical claim are to select a chairperson by agreement within 15 days after the filing of a request for the formation of a medical review panel. However, if an agreement on a chairperson cannot be reached, either party may request the Clerk of the Ohio Supreme Court to draw, at random, the names of five licensed attorneys who maintain offices in the county of venue designated in the medical claim or in a contiguous county. The Clerk may charge a reasonable fee for this service.

The Clerk must notify the parties when the names of five attorneys have been drawn. The parties then alternate in striking names, with the plaintiff striking first. The Clerk notifies the opposing party when a name has been stricken. If a party does not strike an attorney's name within five days after receiving notice from the Clerk, the opposing party must direct the Clerk, in writing, to strike an attorney's name. The remaining attorney serves as the chairperson of the panel. The Clerk must notify this attorney, and notify the parties to the medical claim, within five days after the attorney's selection as chairperson. Within 15 days after receiving notice, the chairperson either must send a written acknowledgment of the appointment to the Clerk or show good cause for relief from the appointment.

Provider members

Each party before a medical review panel must select a provider to serve as a member of the panel within 15 days after being notified of the selection of a chairperson. Within this 15-day period, the selecting party must identify the provider selected, in writing, to the opposing party and the chairperson. The chairperson is charged with making a selection, and with providing written notice,

if either party fails to make a timely selection. Within 15 days after their selection to the panel, the two providers selected must select a third provider and notify the chairperson and all other parties of the selection. If the providers fail to make the selection, the chairperson is charged with selecting the third provider and notifying all parties.

If there are multiple plaintiffs or defendants to a claim, only one provider member may be selected per side. If there is only one defendant to the claim, an individual, two of the panel members must be providers in the same health care profession or specialty.

The bill makes all individual providers, except those serving as an administrator of a hospital, home, or residential facility, available to serve as a provider member of a medical review panel.

Challenges

The bill permits a party to a medical claim to challenge the opposing party's selection of a provider member, without cause, within ten days after being notified of the selection. The challenge must be submitted to the chairperson in writing. The party whose selection is challenged must select another provider member.

Either party may challenge the third provider selected by the two providers initially chosen by the parties. The providers must then select another provider member. If two challenges without cause are submitted to the chairperson, the chairperson must nominate three qualified providers within ten days after receiving the second challenge. Each party must eliminate one of the nominated providers within ten days, with the remaining provider serving as the third provider member of the panel.

Notice

The panel chairperson must send notice, by certified mail, to the Superintendent of Insurance and all parties to the medical claim, within five days after all members of a medical review panel have been chosen. The notice has to include the names and addresses of the panel members and the date on which the last panel member was selected.

Relief from service on a panel

(sec. 2323.458)

An individual selected to serve as a member of a medical review panel may be excused from service by mutual agreement of the parties or for good cause shown. Under the bill, to show good cause for relief from service on a panel, an

attorney chosen as chairperson must serve an affidavit on the Clerk of the Ohio Supreme Court setting out facts showing that service would constitute an unreasonable burden or undue hardship. The Clerk may excuse the attorney from service; the parties then must select a new chairperson in the manner provided above. To show good cause for relief from service on a panel, a *provider* must serve an affidavit on the panel chairperson setting out facts showing that service would constitute an unreasonable burden or hardship. The chairperson may excuse the provider from service; the remaining members of the panel then must select a new provider member within 15 days.

Panel activities and opinion

(secs. 2323.45(D), 2323.452(C), and 2323.459 to 2323.4517)

As chairperson of the medical review panel, the attorney member of the panel expedites the selection of the provider members, convenes the panel, and expedites the panel's review of the medical claim. The chairperson is required to establish a reasonable schedule for submission of evidence to the panel, allowing sufficient time for the parties to make full and adequate presentation of relevant facts and authorities. The chairperson is charged with advising the provider members relative to any legal question involved in the proceeding and with preparing the panel's opinion.

Parties wanting written evidence to be considered by the panel must submit the evidence promptly. The evidence may consist of medical charts, x-rays, lab tests, excerpts of treatises, depositions of witness including parties, and any other form of evidence allowed by the medical review panel. Parties and witnesses may be deposed before the panel convenes. Each panel member must be given the opportunity to review every item of evidence submitted. A medical review panel may also request any information necessary to reach its opinion. A panel may consult with medical authorities and may examine relevant provider medical reports. All parties have full access to any material received by the panel.

Before considering any evidence, or deliberating with the other panel members, each member is required to give a written oath affirming that they will consider the evidence submitted, render an opinion without bias, and will not communicate with any party or representative of a party before rendering an opinion, except as authorized by law. The parties before a panel, their agents and attorneys, and the defendant's malpractice insurer, are all forbidden from communicating with any member of the panel before the panel renders its opinion.

After all evidence has been submitted, either party may convene the panel at a time and place agreeable to the panel members. The chairperson must provide ten days notice to the other party. Either party may question the panel concerning

any matter pertaining to the review. The bill states that meetings are to be informal.

The panel's opinion

The bill states the medical review panel's sole duty is to express an expert opinion as to whether or not the evidence submitted supports a conclusion that the defendant or defendants failed to act within the appropriate standards of medical care, as claimed by the plaintiff. The opinion is not a ruling of law, but may be a consideration to parties negotiating a settlement. Under the bill, the panel must give its expert opinion within 180 days after the selection of the last member to the panel. The opinion is to be given, in writing and signed by the members, within 30 days after all evidence is submitted by the parties.

The panel's opinion may be delayed, however, if after the first 90 days the chairperson is removed by the Superintendent of Insurance, a member is removed by the chairperson, or any member is removed by court order. The panel then has 90 days from the selection of a new panel member to render its expert opinion. The panel must submit a report to the Superintendent if the opinion is delayed, stating the reason for the delay. The Superintendent may remove the chairperson from a panel if the Superintendent determines the chairperson is not fulfilling the duties imposed by this bill; a new chairperson will be selected by the parties in the manner provided above. The chairperson may remove a provider member of the panel if the chairperson determines the member is not fulfilling the duties imposed by this bill; the remaining members then must select a new member within 15 days.

The panel's expert opinion must state one of the following:

- (1) The evidence supports the conclusion that the defendant or defendants failed to comply with the appropriate standard of care as claimed by the plaintiff.
- (2) The evidence does not support the conclusion that the defendant or defendants failed to meet the applicable standard of care as claimed.
- (3) There is a material question of fact bearing on the liability of the defendant or defendants.
- (4) The conduct complained of was or was not a factor in the resulting damages. If the panel concludes the conduct was a factor, the panel must state whether the plaintiff suffered any disability and the extent or duration of the disability, or suffered any permanent impairment, and the percentage of the impairment.

Upon issuing its opinion, the panel ceases to exist. The chairperson is required to send a copy of the panel's report, by certified mail, to the Superintendent of Insurance and all parties to the claim within five days after the panel issues its opinion.

The expert opinion reached by the panel is admissible as evidence in any civil action brought by the plaintiff, but is *not* conclusive. Section 2305.113 of the Revised Code, within the chapter of the Revised Code governing actions in the Common Pleas Courts, governs the time limits for commencing the civil action. Either party to the action may call any member of the medical review panel as a witness. If called, the member is required to appear and testify.

Compensation for service on a panel; immunity

(secs. 2323.4518 and 2323.4519)

The bill allots each provider member of a medical review panel \$350 for all work performed as a member of the panel and reasonable travel expenses. If the member is called to testify as a witness in court, the member's time in court is not considered to be the work of the panel. The bill gives the chairperson pay of \$250 per day, not to exceed \$2,000, and reasonable travel expenses.

The chairperson is required to keep an accurate record of the time and expenses of each member of the panel. The record is to be submitted to the parties for payment, with the panel's report. The prevailing party must pay for the panel's expenses, including the travel expenses and all other expenses of the review. If there is no majority opinion, each side must pay half of the panel's expenses.

Under the bill, all panel members have absolute immunity from civil liability for all communications, findings, opinions, and conclusions made in the course and scope of the duties assigned by law.

COMMENT

The bill repeals existing law sections pertaining to the operation of the Joint Underwriting Association, the operation of which was previously dissolved pursuant to authority found in section 3929.721 of the Revised Code. The bill also amends Revised Code sections containing cross-references to the sections of the Joint Underwriting Association as are amended by the bill (secs. 3929.482, 3929.85, 3931.01, 3955.05, 3960.06, and 4731.143).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	06-06-03	p. 549

h0215-i-125.doc/kl

