



# Ohio Legislative Service Commission

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## Bill Analysis

Ashley Blackburn

### **Sub. S.B. 9\***

130th General Assembly  
(As Reported by H. Insurance)

**Sens.** Bacon, Beagle, Hite, Jones, Seitz, Widener, Brown, Cafaro, Eklund, Lehner, Manning, Peterson, Smith

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### **BILL SUMMARY**

- Requires health insuring corporations to file any changes in a solicitation document with the Superintendent of Insurance 30 days prior to use for informational purposes.
- Authorizes the Superintendent to disapprove any solicitation document or require that the document be amended if the Superintendent finds that the document fails to comply with the necessary requirements.
- Suspends the operation of the following programs during the period beginning January 1, 2014, and expiring January 1, 2018: Ohio's Open Enrollment Program, Ohio's Health Reinsurance Program, and the option to convert certain health insurance contracts and policies.
- Requires that if the applicable sections of the federal Patient Protection and Affordable Care Act of 2010, related to health insurance coverage, do not take effect January 1, 2014, or become ineffective prior to the expiration of the suspension on January 1, 2018, then the suspended sections in either their present form or as they are later amended, again become operational.

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\* This analysis was prepared before the report of the House Insurance 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

### HIC solicitation documents

The bill requires a health insuring corporation (HIC) to file with the Superintendent of Insurance any changes in the HIC's solicitation document 30 days prior to use for informational purposes. If, under the bill, the Superintendent finds that any solicitation document fails to comply with the necessary requirements, pursuant to existing law the Superintendent is authorized to disapprove the solicitation document. In addition, the bill allows the Superintendent to require amendment to a solicitation document. Existing law requires any changes in a HIC's solicitation document to be filed with the Superintendent, with no prior-to-use requirement, and allows the Superintendent 60 days to disapprove any solicitation document or amendment to it.<sup>1</sup>

Under continuing law, the Superintendent must give written notice to the HIC of a disapproval of a solicitation document, and the notice must state the grounds for disapproval as well as comply with Ohio's Administrative Procedure Law.<sup>2</sup> Continuing law requires that a solicitation document contain all information necessary to enable a consumer to make an informed choice as to whether or not to enroll in the health insuring corporation. Additionally, continuing law requires the information to include a specific description of the health care services to be available and the approximate number and type of full-time equivalent medical practitioners. Finally, the information must be presented in the solicitation document in a manner that is clear, concise, and intelligible to prospective applicants in the proposed service area.<sup>3</sup>

### **Suspension of Ohio's Open Enrollment Program, Health Reinsurance Program, and option for conversion of a health policy or contract**

The bill suspends during the period beginning on January 1, 2014, and expiring January 1, 2018, the operation of the following programs:

- Ohio's Open Enrollment Program;<sup>4</sup>
- Ohio's Health Reinsurance Program;<sup>5</sup>

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<sup>1</sup> R.C. 1751.31(A).

<sup>2</sup> R.C. 1751.31(A).

<sup>3</sup> R.C. 1751.31(B).

<sup>4</sup> R.C. 1751.15, 3923.28, 3923.581, 3923.582, and 3923.59.

<sup>5</sup> R.C. 3923.59, 3924.07, 3924.08, 3924.09, 3924.10, 3924.11, 3924.111, 3924.12, 3924.13, and 3924.14.



- Option for conversion from a group to individual contract under an existing contract with a HIC;<sup>6</sup>
- Option for conversion from a nongroup contract to a contract issued on a direct payment basis under an existing contract with a HIC;<sup>7</sup>
- Option for conversion from a group policy to an individual policy under an existing policy with a sickness and accident insurer.<sup>8</sup>

Under the federal Patient Protection and Affordable Care Act of 2010 (ACA),<sup>9</sup> because of the guaranteed availability of coverage in the individual and group markets, the programs suspended by the bill, and outlined above, appear to be duplicative of the new federal programs.<sup>10</sup> If the guaranteed availability of coverage and the requirements related to health insurance coverage under the ACA do not take effect on January 1, 2014, or become ineffective prior to the expiration of the suspension, then the suspended programs outlined above, in either their present form or as they are later amended, again become operational.<sup>11</sup>

### **Requirements for existing open enrollment or conversion policies or contracts**

Under the bill, carriers must not be required to offer open enrollment coverage under the Ohio Open Enrollment Program on or after January 1, 2014.<sup>12</sup> Under existing law, during certain periods of time, insurers are required to accept individuals for health care coverage generally without regard to the individual's health status pursuant to Ohio's Open Enrollment Program.<sup>13</sup>

Additionally, under the bill, carriers must not be required to include any option to convert coverage as required by the suspended laws in any policy or contract issued on or after January 1, 2014.<sup>14</sup> Under existing law, HICs are required to provide the

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<sup>6</sup> R.C. 1751.16.

<sup>7</sup> R.C. 1751.17.

<sup>8</sup> R.C. 3923.122.

<sup>9</sup> 124 Stat. 119.

<sup>10</sup> 42 U.S.C. 300gg-1 and 300gg-6.

<sup>11</sup> Section 3 of the bill.

<sup>12</sup> Section 3 of the bill.

<sup>13</sup> R.C. 1751.15, 3923.28, 3923.581, 3923.582, and 3923.59.

<sup>14</sup> Section 3 of the bill.

option for conversion of every group contract to an individual contract issued on a direct-payment basis to any subscriber covered by the group contract who terminates employment or membership in the group, unless certain exceptions apply.<sup>15</sup> Existing law also requires that every nongroup contract that is issued by a HIC that makes available basic health care services must provide an option for conversion to a contract issued on a direct-payment basis to an enrollee covered by the nongroup contract, unless certain exceptions apply.<sup>16</sup> Similar to the conversion requirements of HICs, existing law requires every policy of group sickness and accident insurance providing hospital, surgical, or medical expense coverage for other than specific diseases or accidents only to include a provision giving each insured the option to convert under certain circumstances.<sup>17</sup>

With respect to an open enrollment or conversion policy or contract issued prior to January 1, 2014, the bill authorizes a carrier to terminate such policy or contract on or after January 1, 2014, if the carrier provides notice of termination to the policy or contract holder at the time the policy is issued, or at least 90 days prior to the termination, and offers the policy or contract holder the option to purchase other coverage offered by the insurer to be effective at the time of the termination.<sup>18</sup>

### **Ohio's Health Reinsurance Program and Board of Directors**

Under the bill, carriers must not reinsure any insurance policies with the Ohio Health Reinsurance Program (Program) during the suspension of the Program on or after January 1, 2014.<sup>19</sup> Under existing law, the Program reinsures small employer health benefit plans that offer group coverage to employees of employers with at least two and up to 50 employees without regard for the employees' health status, and open enrollment plans that offer coverage to specified individuals without regard for the applicant's health status.<sup>20</sup>

Moreover, under existing law, the Program is administered by a Board of Directors.<sup>21</sup> The bill requires that the Program's Board must continue to have all of the

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<sup>15</sup> R.C. 1751.16.

<sup>16</sup> R.C. 1751.17.

<sup>17</sup> R.C. 3923.122.

<sup>18</sup> Section 3 of the bill.

<sup>19</sup> Section 3 of the bill.

<sup>20</sup> R.C. 3924.01 to 3924.14.

<sup>21</sup> R.C. 3924.08.

authority and protection provided by the law during the period beginning January 1, 2014, and ending December 31, 2014, in order to wind up affairs of the Program. The bill requires the Board to pay all claims incurred on or before January 1, 2014, handle assessments needed to fund the wind up of the Program, as well as refund any excess assessments, and prepare final audited financial statements and tax returns.<sup>22</sup>

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## COMMENT

The provision of Section 3 of the bill that allows the suspended programs to again become operational on the occasion that the federal programs under the ACA do not take effect, or later become ineffective, raises a potential question of an improper delegation of the General Assembly's legislative power because it effectively allows the federal programs to determine how long the Ohio programs might remain suspended. However, if the suspended Ohio programs remained operational at the same time as the federal programs, the Ohio programs would likely be preempted by the federal law.

The Ohio Constitution prohibits the General Assembly from delegating its legislative authority. It provides in relevant part that no act, except one relating to public schools, can be passed to take effect on the approval of any other authority than the General Assembly, except as otherwise provided in the Constitution.<sup>23</sup> Additionally, it provides that the legislative power of the state is vested in the General Assembly.<sup>24</sup> Both provisions demonstrate the underlying policy that the General Assembly, as the representative body for the people, is politically responsible for setting state policy and for enacting legislation. The General Assembly cannot give that power to any other authority, unless the authority to delegate is given by the constitution itself, either expressly or by implication.<sup>25</sup>

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## HISTORY

ACTION	DATE
Introduced	02-12-13
Reported, S. Insurance & Financial Institutions	03-19-13
Passed Senate (33-0)	03-19-13
Reported, H. Insurance	-----

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<sup>22</sup> Section 3 of the bill.

<sup>23</sup> Ohio Const. Art. II, Sec. 26.

<sup>24</sup> Ohio Const. Art. II, Sec. 1.

<sup>25</sup> *State ex rel. Bryant v. Akron Metropolitan Park District*, 120 Ohio St. 464, 478 (1929).

