

MEMORANDUM

ATTORNEY-CLIENT PRIVILEGED

TO: Ohio Manufacturer's Association

FROM: Bricker & Eckler LLP

DATE: November 24, 2015

RE: H.B. 350 – Memorandum on Autism Coverage in Ohio and Impact of H.B. 350

ISSUES

1. Is coverage for the treatment of Autism Spectrum Disorder an Essential Health Benefit (“EHB”) for health plans in Ohio?
2. What is the potential impact of H.B. 350, 131st Gen. Assemb., Reg. Sess. (Ohio 2015) [hereinafter H.B. 350]?

CONCLUSIONS

1. On December 26, 2012, Governor John Kasich signed a directive (the “Directive”) making coverage for Autism Spectrum Disorder an EHB.
2. As an EHB, coverage for Autism Spectrum Disorder under the Directive applies only to new plans issued in the small group and individual markets in Ohio.
3. Similarly to the Directive, H.B. 350 would require coverage for Autism Spectrum Disorder, however, H.B. 350 would apply to large group plans, all grandfathered plans, and sickness and accident plans.
4. As an additional benefit that plans must provide, H.B. 350 may increase employer health care costs.
5. Unlike some state-mandated benefits, the Patient Protection and Affordable Care Act (“PPACA”) will not require Ohio to subsidize the increased health care costs resulting from H.B. 350.

ANALYSIS

I. Coverage for Autism Spectrum Disorder an EHB

Under PPACA, EHBs are benefits that must be provided by new health plans offered in the small group and individual markets. Patient Protection and Affordable Care Act, Pub. L. No. 111-148, § 1301(a), 124 Stat. 119, 162 (2010) [hereinafter PPACA]; 45 C.F.R. § 155.150(a). PPACA provides a statutory list of federally-mandated EHBs. PPACA § 1302. Included in this list is a category of benefits termed “Habilitative Services.” Regulations issued under PPACA give states authority to define the benefits that comprise this EHB. 45 C.F.R. § 156.110(f).

On December 26, 2012, Governor John Kasich signed the Directive exercising this authority. The Directive defines coverage for Autism Spectrum Disorder as a Habilitative Service, and therefore, makes such coverage a federally-mandated EHB. Office of the Governor, Habilitative Services Letter (Ohio Dec. 26, 2012). Under the Directive, if a child, defined as an individual up to age twenty-one, is diagnosed with Autism Spectrum Disorder, a health plan must provide: speech and occupational therapy; clinical therapeutic intervention; and mental or behavior outpatient services. Id.

To understand the Directive, it is important to note its limited impact. Large group plans and grandfathered plans are not required to provide coverage for EHBs. See PPACA § 1301(a); 45 C.F.R. § 155.150(a); PPACA § 1251. Therefore, the Directive only impacts new plans issued in the small group and individual markets, as these are the plans required by PPACA to provide EHBs.

II. The Impact of H.B. 350

H.B. 350, if enacted, would serve as a complement to the Directive. It would apply to all health plans offered in the large group market, all grandfathered health plans offered individual and small group markets, and to sickness and accident plans issued in Ohio. H.B. 350, § 1751.84; H.B. 350, § 3923.84. For all of these plans, H.B. 350 would mandate coverage for children under the age of twenty-one for the “screening, diagnosis, and treatment” of Autism Spectrum Disorder. Similarly to the Directive, these benefits include: speech or occupational therapy; clinical therapeutic intervention; and mental or behavior outpatient services. Id.

Employers who obtain health insurance for their employees through the small group market will generally not be impacted by H.B. 350. Yet, due to the Directive, these plans will likely already provide benefits for the treatment of Autism Spectrum Disorder. The only exception is if an employer offers a grandfathered small group plan. While the Directive did not reach these plans, H.B. 350 would now require grandfathered small group plans to provide coverage for Autism Spectrum Disorder. This increase in coverage could lead to increased premiums for a limited number of employers in the small group market.

H.B. 350 would have its most significant impact on employers in the large group market. It would require all health care plans obtained in the large group market to provide coverage for

Autism Spectrum Disorder, regardless of a plan's grandfathered status. This expansion in mandated coverage will likely increase health care cost for large employers.

It is important to note that Ohio will not be required to provide a subsidy to cover the additional insurance costs created by H.B. 350. Under certain circumstances, states may be required to pay individuals or health insurance issuers a subsidy if the state requires new small group or individual plans to provide benefits in excess of the federally-mandated EHBs. 45 C.F.R. § 155.170(b). However, because large group and grandfathered plans are the only health plans impacted by H.B. 350, Ohio will not be required to offset the additional costs of this proposed legislation.

III. Conclusion

H.B. 350 would require large group health plans, grandfathered health plans, and sickness and accident plans to provide coverage for Autism Spectrum Disorder. This proposed legislation would represent an increase in the benefits that plans must provide, and thus it could potentially increase the cost of the plans impacted. Furthermore, the state would not be required under PPACA to subsidize the cost of providing these additional benefits.

KTB:tflec