
DEPARTMENT OF INSURANCE (INS)

- Abolishes the Health Care Coverage and Quality Council.
- Allows life insurers and health insurers to offer wellness or health improvement programs that include rewards and incentives to encourage or reward participation.
- Prohibits any contracting entity from offering, entering into, amending, or renewing any contract with a health care provider, including a hospital, that contains a most favored nation clause.
- Permits contracts existing on June 25, 2008, to retain a most favored nation clause for the duration of the contract unless the contract is amended, extended, or renewed after September 29, 2011.
- Protects rights related to netting agreements and qualified financial contracts under Ohio's Insurer Rehabilitation and Liquidation Law.
- Establishes guidelines for termination, liquidation, acceleration, close out, transfer, and disaffirmance or repudiation of netting agreements or qualified financial contracts.

Health Care Coverage and Quality Council

(R.C. 3923.90 and 3923.91 (repealed); R.C. 185.01, 185.03, 185.06, 185.10, 3319.71, 3924.10, and 4113.11)

The act abolishes the Health Care Coverage and Quality Council. Under prior law, the Council had the following duties:

- Advising the Governor and General Assembly on strategies to improve health care programs and health insurance policies and benefit plans;
- Monitoring and evaluating implementation of strategies for improving access to health insurance coverage and improving the quality of Ohio's health care system;
- Cataloging health care data reporting efforts and making recommendations to improve data reporting in a manner that increases



transparency and consistency in the health care and insurance coverage systems;

- Studying health care financing alternatives that will increase access to health insurance coverage, promote disease prevention and injury prevention, contain costs, and improve quality;
- Evaluating the systems that individuals use to obtain or otherwise become connected with health insurance and recommending improvements to those systems or the use of alternative systems;
- Recommending minimum coverage standards for basic and standard health insurance plans offered by insurance carriers in the small group market;
- Recommending strategies to assist individuals in being able to afford health insurance coverage;
- Recommending strategies to implement health information technology to support improved access and quality and reduced costs in Ohio's health care system;
- Studying alternative care management options for Medicaid recipients who are not required to participate in the care management system;
- Reviewing the medical home model of care concept, proposing the characteristics of a patient centered medical home model of care, pursuing appropriate funding opportunities for the development of a patient centered medical home model of care, and proposing payment reforms that encourage implementation of a patient centered medical home model of care;
- Collaborating with the Chancellor of the Ohio Board of Regents or any other entity the Council considers appropriate to review issues that may cause limitations on the use of a patient centered medical home model of care;
- Recommending reporting requirements for any physician practice or advanced practice nurse primary care practice using a patient centered medical home model of care;
- Making recommendations to the Superintendent of Insurance concerning cafeteria plans that continuing law requires employers to provide.



Under prior law, the Council also had to perform any other duties the Superintendent specified in rules.

The act allows the Superintendent to appoint an individual to the Patient Centered Medical Home Education Advisory Group in lieu of the Council member who was a voting member under prior law. The act also makes other conforming changes including removing a requirement that a physician practice or advanced practice nurse primary care practice comply with reporting requirements recommended by the Council in order to be eligible for inclusion in the Patient Centered Medical Home Education Pilot Project.

Wellness programs

(R.C. 3901.56)

The act allows life and health insurers to offer a wellness or health improvement program that provides rewards or incentives, including merchandise; gift cards; debit cards; premium discounts or rebates; contributions to a health savings account; modifications to copayment, deductible, or coinsurance amounts; or any combination of these incentives, to encourage participation or to reward participation in the program. However, under the act, the insured may be required to provide verification, such as a statement from their physician, that a medical condition makes it unreasonably difficult or medically inadvisable for the individual to participate in the wellness or health improvement program.

Under the act, a wellness or health improvement program offered by an insurer cannot be construed to violate Ohio's prohibitions against using gifts or other incentives to induce a person to purchase insurance if the program is disclosed in the policy or plan. Additionally, under the act, neither of the following may be construed as prohibiting an insurer from offering a wellness or health improvement program or restricting the amount an employee is charged for coverage under a group policy after the application of any premium discounts or rebates, or modifying otherwise applicable copayments or deductibles for adherence to wellness or health improvement programs:

- Ohio's law that prohibits insurers from charging similarly situated individuals different premiums or other contributions under an employment-related group sickness and accident insurance policy;
- Ohio's law that prohibits employers from excluding an individual from coverage under a plan based on the health status of the individual.



The act's wellness program provisions apply to life insurers, sickness and accident insurers, health insuring corporations, multiple employer welfare arrangements, and public employee benefit plans.

Most favored nation clauses in health care contracts

(R.C. 3963.11; Sections 630.10 and 630.11)

The act prohibits any contracting entity from offering, entering into, amending, or renewing any contract with a health care provider that contains a most favored nation clause. Under prior law, the prohibition on most favored nation clauses did not include contracts offered, entered into, amended, or renewed with a hospital. The act extends the prohibition to contracts with hospitals.

A "most favored nation clause" in the context of a health care contract is a provision that does any of the following:

(1) Prohibits, or grants a contracting entity an option to prohibit, the participating provider from contracting with another contracting entity to provide health care services at a lower price than the payment specified in the contract;

(2) Requires, or grants a contracting entity an option to require, the participating provider to accept a lower payment in the event the participating provider agrees to provide health care services to any other contracting entity at a lower price;

(3) Requires, or grants a contracting entity an option to require, termination or renegotiation of the health care contract in the event the participating provider agrees to provide health care services to any other contracting entity at a lower price;

(4) Requires the participating provider to disclose the participating provider's contractual reimbursement rates with other contracting entities.

The prohibition on most favored nation clauses does not apply to contracts in effect June 25, 2008, unless those contracts are amended, extended, or renewed after September 29, 2011.

Netting agreements and qualified financial contracts under the Insurer Rehabilitation and Liquidation Law

The act protects rights related to netting agreements and qualified financial contracts under Ohio's Insurer Rehabilitation and Liquidation Law. The act also establishes guidelines for termination, liquidation, acceleration, close out, transfer, and disaffirmance or repudiation of netting agreements or qualified financial contracts.



Protection of rights related to qualified financial contracts and netting agreements

(R.C. 3903.301(A))

The act prohibits any person from being stayed or prohibited from exercising any of the following rights:

- A contractual right to cause the termination, liquidation, acceleration, or close out of obligations under, or in connection with, a netting agreement or qualified financial contract with an insurer because of the insolvency, financial condition, or default of the insurer at any time or because of the commencement of a rehabilitation or liquidation proceeding under Ohio law;
- Any right under a pledge, security, collateral, reimbursement, or guarantee agreement or arrangement or any similar security arrangement or credit enhancement relating to a netting agreement or qualified financial contract;
- Any right to set off or net out any termination value, payment amount, or other transfer obligation arising under or in connection with a qualified financial contract in which the counterparty or its guarantor is organized under the laws of the United States, a state, or a foreign jurisdiction that the securities valuation office of the National Association of Insurance Commissioners (NAIC) approves as eligible for netting. The act maintains, however, continuing law's requirements for set offs.

Termination of a netting agreement or qualified financial contract

(R.C. 3903.301(B) and (C))

If a counterparty to a netting agreement or qualified financial contract with an insurer that is subject to a proceeding under Ohio's Insurer Rehabilitation and Liquidation Law terminates, liquidates, accelerates, or closes out the agreement or contract, the act requires damages to be measured as of the date or dates of the termination, liquidation, acceleration, or close out. The amount of a claim for damages must be actual direct compensatory damages.

Upon termination of a netting agreement or qualified financial contract, the act requires any net or settlement amount that a nondefaulting party owes to an insurer against which an application or petition has been filed under Ohio's Insurer Rehabilitation and Liquidation Law to be transferred to, or on the order of, the receiver



for the insurer. This requirement applies regardless of whether the insurer is the defaulting party and applies notwithstanding any walkaway clause in the netting agreement or qualified financial contract. Additionally, a limited two-way payment or first method provision in a netting agreement or qualified financial contract with a defaulting insurer is a full two-way payment or second method provision as against the defaulting insurer under the act. Any property or amount transferred must be a general asset of the insurer except to the extent it is subject to a secondary lien or encumbrance, or to rights of netting or setoff.

Transferring a netting agreement or qualified financial contract

(R.C. 3903.301(D) and (E))

In transferring a netting agreement or qualified financial contract of an insurer that is subject to a proceeding under Ohio's Insurer Rehabilitation and Liquidation Law, the act requires the receiver to transfer to one party, other than an insurer subject to a proceeding under that Law, all netting agreements and qualified financial contracts between a counterparty, or any affiliate of the counterparty, and the insurer that is the subject of the proceeding. The transfer must include all rights and obligations of each party under each netting agreement and qualified financial contract, and all property, including any guarantees or other credit enhancement, securing any claims of the parties under each agreement or contract.

As an alternative, the act allows the receiver who is transferring a netting agreement or qualified financial contract of an insurer that is subject to a proceeding under Ohio's Insurer Rehabilitation and Liquidation Law, to transfer none of the netting agreements or qualified financial contracts, including the rights, obligations, and property associated with those agreements and contracts, with respect to the counterparty and any affiliate of the counterparty.

If a receiver transfers a netting agreement or qualified financial contract, the act requires the receiver to use its best efforts to notify any person who is a party to the transferred agreement or contract of the transfer by noon, of the receiver's local time, on the business day following the transfer.

Transfer of money or property before a proceeding

(R.C. 3903.301(F))

The act prohibits a receiver from avoiding a transfer of money or other property that is made before the beginning of a rehabilitation or liquidation proceeding under Ohio law and that arises under or in connection with a netting agreement or qualified financial contract, or any pledge, security, collateral, or guarantee agreement or other



similar security arrangement or credit support document relating to a netting agreement or qualified financial contract.

However, the act allows a receiver to avoid a transfer of property under Ohio's Insurer Rehabilitation and Liquidation Law if the transfer was made with actual intent to hinder, delay, or defraud the insurer, a receiver appointed for the insurer, or existing or future creditors.

Disaffirmance or repudiation of a netting agreement or qualified financial contract

(R.C. 3903.301(G))

In exercising any right of disaffirmance or repudiation with respect to a netting agreement or qualified financial contract to which an insurer is a party, the act requires the receiver for the insurer to do either of the following:

- Disaffirm or repudiate all netting agreements and qualified financial contracts between the insurer and a counterparty or any affiliate of the counterparty;
- Disaffirm or repudiate none of those netting agreements or qualified financial contracts with respect to the counterparty or any affiliate of the counterparty.

If a counterparty's claim against the estate of the insurer arising from the receiver's disaffirmance or repudiation of a netting agreement or qualified financial contract has not been previously affirmed in the liquidation or immediately preceding conservation or rehabilitation case, the act requires that claim to be considered as if it had arisen before the filing date of the petition for liquidation. If a conservation or rehabilitation proceeding is converted to a liquidation proceeding, that claim must be considered as if it had arisen before the filing date of the petition for conservation or rehabilitation. The amount of the claim must be the actual direct compensatory damages determined as of the date of the disaffirmance or repudiation.

Rights of a counterparty

(R.C. 3903.301(H))

Under the act, a counterparty in an action brought under Ohio's Insurer Rehabilitation and Liquidation Law has the rights granted under continuing law, and those rights apply to netting agreements and qualified financial contracts entered into on behalf of the general account. Those rights also apply to netting agreements and qualified financial contracts entered into on behalf of separate accounts if the assets of

each separate account are available only to counterparties to netting agreements and qualified financial contracts entered into on behalf of that separate account.

Affiliates of the insurer

(R.C. 3903.301(I))

The act's changes to Ohio's Insurer Rehabilitation and Liquidation Law do not apply to the affiliates of an insurer that is the subject of any rehabilitation or liquidation proceeding under that law.

Effective date

(Section 803.60)

The act's requirements regarding netting agreements and qualified financial contracts apply only to formal delinquency proceedings that commence under Ohio's Insurer Rehabilitation and Liquidation Law on or after the effective date of this act.

Definitions

(R.C. 3903.01)

Qualified financial contract

A "qualified financial contract" is any commodity contract, forward contract, repurchase agreement, securities contract, swap agreement, and any similar agreement that the Superintendent of Insurance determines by rule to be a qualified financial contract. "Forward contract," "repurchase agreement," "securities contract," and "swap agreement" are defined under the federal Deposit Insurance Act (12 U.S.C. 1821(e)).

A "commodity contract" is a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a board of trade designated as a contract market by the commodity futures trading commission under the federal "Commodity Exchange Act," or a board of trade outside the United States. A commodity contract also is an agreement that is commonly known to the commodities trade as a margin account, margin contract, leverage account, leverage contract, or commodity option and that is subject to regulation under the federal "Commodity Exchange Act." Any combination of agreements or transactions described above as commodity contracts and any option to enter into an agreement or transaction described above are commodity contracts under the act.

Netting agreement

A netting agreement is any of the following agreements:



- A contract or agreement, including a master agreement, and any terms and conditions incorporated by reference in that contract or agreement, that provides for the netting, liquidation, setoff, termination, acceleration, or close out under or in connection with a qualified financial contract, or any present or future payment or delivery obligations or entitlements under a qualified financial contract, including liquidation or close-out values relating to those obligations or entitlements;
- A master agreement, together with all schedules, confirmations, definitions, and addenda to the agreement and transactions under the agreement, which must be treated as one netting agreement, and any bridge agreement for one or more master agreements;
- Any security agreement or arrangement, credit support document, or guarantee or reimbursement obligation related to any contract or agreement that is a netting agreement.

Any contract or agreement that is described above as a netting agreement and that relates to agreements or transactions that are not qualified financial contracts are netting agreements only with respect to those agreements or transactions that are qualified financial contracts.

