

As Introduced

132nd General Assembly

Regular Session

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H. B. No. 536

Representative Reece

Cosponsors: Representatives Kelly, Smith, K., West, Howse, Kent

A BILL

To amend section 3901.21 and to enact sections 1
3901.80 and 5167.15 of the Revised Code to 2
prohibit health plan issuers, including those 3
participating in the Medicaid care management 4
system, from implementing any form of selective 5
emergency services coverage. 6

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 3901.21 be amended and sections 7
3901.80 and 5167.15 of the Revised Code be enacted to read as 8
follows: 9

Sec. 3901.21. The following are hereby defined as unfair 10
and deceptive acts or practices in the business of insurance: 11

(A) Making, issuing, circulating, or causing or permitting 12
to be made, issued, or circulated, or preparing with intent to 13
so use, any estimate, illustration, circular, or statement 14
misrepresenting the terms of any policy issued or to be issued 15
or the benefits or advantages promised thereby or the dividends 16
or share of the surplus to be received thereon, or making any 17
false or misleading statements as to the dividends or share of 18

surplus previously paid on similar policies, or making any 19
misleading representation or any misrepresentation as to the 20
financial condition of any insurer as shown by the last 21
preceding verified statement made by it to the insurance 22
department of this state, or as to the legal reserve system upon 23
which any life insurer operates, or using any name or title of 24
any policy or class of policies misrepresenting the true nature 25
thereof, or making any misrepresentation or incomplete 26
comparison to any person for the purpose of inducing or tending 27
to induce such person to purchase, amend, lapse, forfeit, 28
change, or surrender insurance. 29

Any written statement concerning the premiums for a policy 30
which refers to the net cost after credit for an assumed 31
dividend, without an accurate written statement of the gross 32
premiums, cash values, and dividends based on the insurer's 33
current dividend scale, which are used to compute the net cost 34
for such policy, and a prominent warning that the rate of 35
dividend is not guaranteed, is a misrepresentation for the 36
purposes of this division. 37

(B) Making, publishing, disseminating, circulating, or 38
placing before the public or causing, directly or indirectly, to 39
be made, published, disseminated, circulated, or placed before 40
the public, in a newspaper, magazine, or other publication, or 41
in the form of a notice, circular, pamphlet, letter, or poster, 42
or over any radio station, or in any other way, or preparing 43
with intent to so use, an advertisement, announcement, or 44
statement containing any assertion, representation, or 45
statement, with respect to the business of insurance or with 46
respect to any person in the conduct of the person's insurance 47
business, which is untrue, deceptive, or misleading. 48

(C) Making, publishing, disseminating, or circulating, 49
directly or indirectly, or aiding, abetting, or encouraging the 50
making, publishing, disseminating, or circulating, or preparing 51
with intent to so use, any statement, pamphlet, circular, 52
article, or literature, which is false as to the financial 53
condition of an insurer and which is calculated to injure any 54
person engaged in the business of insurance. 55

(D) Filing with any supervisory or other public official, 56
or making, publishing, disseminating, circulating, or delivering 57
to any person, or placing before the public, or causing directly 58
or indirectly to be made, published, disseminated, circulated, 59
delivered to any person, or placed before the public, any false 60
statement of financial condition of an insurer. 61

Making any false entry in any book, report, or statement 62
of any insurer with intent to deceive any agent or examiner 63
lawfully appointed to examine into its condition or into any of 64
its affairs, or any public official to whom such insurer is 65
required by law to report, or who has authority by law to 66
examine into its condition or into any of its affairs, or, with 67
like intent, willfully omitting to make a true entry of any 68
material fact pertaining to the business of such insurer in any 69
book, report, or statement of such insurer, or mutilating, 70
destroying, suppressing, withholding, or concealing any of its 71
records. 72

(E) Issuing or delivering or permitting agents, officers, 73
or employees to issue or deliver agency company stock or other 74
capital stock or benefit certificates or shares in any common- 75
law corporation or securities or any special or advisory board 76
contracts or other contracts of any kind promising returns and 77
profits as an inducement to insurance. 78

(F) Making or permitting any unfair discrimination among 79
individuals of the same class and equal expectation of life in 80
the rates charged for any contract of life insurance or of life 81
annuity or in the dividends or other benefits payable thereon, 82
or in any other of the terms and conditions of such contract. 83

(G) (1) Except as otherwise expressly provided by law, 84
knowingly permitting or offering to make or making any contract 85
of life insurance, life annuity or accident and health 86
insurance, or agreement as to such contract other than as 87
plainly expressed in the contract issued thereon, or paying or 88
allowing, or giving or offering to pay, allow, or give, directly 89
or indirectly, as inducement to such insurance, or annuity, any 90
rebate of premiums payable on the contract, or any special favor 91
or advantage in the dividends or other benefits thereon, or any 92
valuable consideration or inducement whatever not specified in 93
the contract; or giving, or selling, or purchasing, or offering 94
to give, sell, or purchase, as inducement to such insurance or 95
annuity or in connection therewith, any stocks, bonds, or other 96
securities, or other obligations of any insurance company or 97
other corporation, association, or partnership, or any dividends 98
or profits accrued thereon, or anything of value whatsoever not 99
specified in the contract. 100

(2) Nothing in division (F) or division (G) (1) of this 101
section shall be construed as prohibiting any of the following 102
practices: (a) in the case of any contract of life insurance or 103
life annuity, paying bonuses to policyholders or otherwise 104
abating their premiums in whole or in part out of surplus 105
accumulated from nonparticipating insurance, provided that any 106
such bonuses or abatement of premiums shall be fair and 107
equitable to policyholders and for the best interests of the 108
company and its policyholders; (b) in the case of life insurance 109

policies issued on the industrial debit plan, making allowance 110
to policyholders who have continuously for a specified period 111
made premium payments directly to an office of the insurer in an 112
amount which fairly represents the saving in collection 113
expenses; (c) readjustment of the rate of premium for a group 114
insurance policy based on the loss or expense experience 115
thereunder, at the end of the first or any subsequent policy 116
year of insurance thereunder, which may be made retroactive only 117
for such policy year. 118

(H) Making, issuing, circulating, or causing or permitting 119
to be made, issued, or circulated, or preparing with intent to 120
so use, any statement to the effect that a policy of life 121
insurance is, is the equivalent of, or represents shares of 122
capital stock or any rights or options to subscribe for or 123
otherwise acquire any such shares in the life insurance company 124
issuing that policy or any other company. 125

(I) Making, issuing, circulating, or causing or permitting 126
to be made, issued or circulated, or preparing with intent to so 127
issue, any statement to the effect that payments to a 128
policyholder of the principal amounts of a pure endowment are 129
other than payments of a specific benefit for which specific 130
premiums have been paid. 131

(J) Making, issuing, circulating, or causing or permitting 132
to be made, issued, or circulated, or preparing with intent to 133
so use, any statement to the effect that any insurance company 134
was required to change a policy form or related material to 135
comply with Title XXXIX of the Revised Code or any regulation of 136
the superintendent of insurance, for the purpose of inducing or 137
intending to induce any policyholder or prospective policyholder 138
to purchase, amend, lapse, forfeit, change, or surrender 139

insurance.	140
(K) Aiding or abetting another to violate this section.	141
(L) Refusing to issue any policy of insurance, or	142
canceling or declining to renew such policy because of the sex	143
or marital status of the applicant, prospective insured,	144
insured, or policyholder.	145
(M) Making or permitting any unfair discrimination between	146
individuals of the same class and of essentially the same hazard	147
in the amount of premium, policy fees, or rates charged for any	148
policy or contract of insurance, other than life insurance, or	149
in the benefits payable thereunder, or in underwriting standards	150
and practices or eligibility requirements, or in any of the	151
terms or conditions of such contract, or in any other manner	152
whatever.	153
(N) Refusing to make available disability income insurance	154
solely because the applicant's principal occupation is that of	155
managing a household.	156
(O) Refusing, when offering maternity benefits under any	157
individual or group sickness and accident insurance policy, to	158
make maternity benefits available to the policyholder for the	159
individual or individuals to be covered under any comparable	160
policy to be issued for delivery in this state, including family	161
members if the policy otherwise provides coverage for family	162
members. Nothing in this division shall be construed to prohibit	163
an insurer from imposing a reasonable waiting period for such	164
benefits under an individual sickness and accident insurance	165
policy issued to an individual who is not a federally eligible	166
individual or a nonemployer-related group sickness and accident	167
insurance policy, but in no event shall such waiting period	168

exceed two hundred seventy days. 169

For purposes of division (O) of this section, "federally 170
eligible individual" means an eligible individual as defined in 171
45 C.F.R. 148.103. 172

(P) Using, or permitting to be used, a pattern settlement 173
as the basis of any offer of settlement. As used in this 174
division, "pattern settlement" means a method by which liability 175
is routinely imputed to a claimant without an investigation of 176
the particular occurrence upon which the claim is based and by 177
using a predetermined formula for the assignment of liability 178
arising out of occurrences of a similar nature. Nothing in this 179
division shall be construed to prohibit an insurer from 180
determining a claimant's liability by applying formulas or 181
guidelines to the facts and circumstances disclosed by the 182
insurer's investigation of the particular occurrence upon which 183
a claim is based. 184

(Q) Refusing to insure, or refusing to continue to insure, 185
or limiting the amount, extent, or kind of life or sickness and 186
accident insurance or annuity coverage available to an 187
individual, or charging an individual a different rate for the 188
same coverage solely because of blindness or partial blindness. 189
With respect to all other conditions, including the underlying 190
cause of blindness or partial blindness, persons who are blind 191
or partially blind shall be subject to the same standards of 192
sound actuarial principles or actual or reasonably anticipated 193
actuarial experience as are sighted persons. Refusal to insure 194
includes, but is not limited to, denial by an insurer of 195
disability insurance coverage on the grounds that the policy 196
defines "disability" as being presumed in the event that the 197
eyesight of the insured is lost. However, an insurer may exclude 198

from coverage disabilities consisting solely of blindness or 199
partial blindness when such conditions existed at the time the 200
policy was issued. To the extent that the provisions of this 201
division may appear to conflict with any provision of section 202
3999.16 of the Revised Code, this division applies. 203

(R) (1) Directly or indirectly offering to sell, selling, 204
or delivering, issuing for delivery, renewing, or using or 205
otherwise marketing any policy of insurance or insurance product 206
in connection with or in any way related to the grant of a 207
student loan guaranteed in whole or in part by an agency or 208
commission of this state or the United States, except insurance 209
that is required under federal or state law as a condition for 210
obtaining such a loan and the premium for which is included in 211
the fees and charges applicable to the loan; or, in the case of 212
an insurer or insurance agent, knowingly permitting any lender 213
making such loans to engage in such acts or practices in 214
connection with the insurer's or agent's insurance business. 215

(2) Except in the case of a violation of division (G) of 216
this section, division (R) (1) of this section does not apply to 217
either of the following: 218

(a) Acts or practices of an insurer, its agents, 219
representatives, or employees in connection with the grant of a 220
guaranteed student loan to its insured or the insured's spouse 221
or dependent children where such acts or practices take place 222
more than ninety days after the effective date of the insurance; 223

(b) Acts or practices of an insurer, its agents, 224
representatives, or employees in connection with the 225
solicitation, processing, or issuance of an insurance policy or 226
product covering the student loan borrower or the borrower's 227
spouse or dependent children, where such acts or practices take 228

place more than one hundred eighty days after the date on which 229
the borrower is notified that the student loan was approved. 230

(S) Denying coverage, under any health insurance or health 231
care policy, contract, or plan providing family coverage, to any 232
natural or adopted child of the named insured or subscriber 233
solely on the basis that the child does not reside in the 234
household of the named insured or subscriber. 235

(T) (1) Using any underwriting standard or engaging in any 236
other act or practice that, directly or indirectly, due solely 237
to any health status-related factor in relation to one or more 238
individuals, does either of the following: 239

(a) Terminates or fails to renew an existing individual 240
policy, contract, or plan of health benefits, or a health 241
benefit plan issued to an employer, for which an individual 242
would otherwise be eligible; 243

(b) With respect to a health benefit plan issued to an 244
employer, excludes or causes the exclusion of an individual from 245
coverage under an existing employer-provided policy, contract, 246
or plan of health benefits. 247

(2) The superintendent of insurance may adopt rules in 248
accordance with Chapter 119. of the Revised Code for purposes of 249
implementing division (T) (1) of this section. 250

(3) For purposes of division (T) (1) of this section, 251
"health status-related factor" means any of the following: 252

(a) Health status; 253

(b) Medical condition, including both physical and mental 254
illnesses; 255

(c) Claims experience; 256

(d) Receipt of health care;	257
(e) Medical history;	258
(f) Genetic information;	259
(g) Evidence of insurability, including conditions arising out of acts of domestic violence;	260 261
(h) Disability.	262
(U) With respect to a health benefit plan issued to a small employer, as those terms are defined in section 3924.01 of the Revised Code, negligently or willfully placing coverage for adverse risks with a certain carrier, as defined in section 3924.01 of the Revised Code.	263 264 265 266 267
(V) Using any program, scheme, device, or other unfair act or practice that, directly or indirectly, causes or results in the placing of coverage for adverse risks with another carrier, as defined in section 3924.01 of the Revised Code.	268 269 270 271
(W) Failing to comply with section 3923.23, 3923.231, 3923.232, 3923.233, or 3923.234 of the Revised Code by engaging in any unfair, discriminatory reimbursement practice.	272 273 274
(X) Intentionally establishing an unfair premium for, or misrepresenting the cost of, any insurance policy financed under a premium finance agreement of an insurance premium finance company.	275 276 277 278
(Y) (1) (a) Limiting coverage under, refusing to issue, canceling, or refusing to renew, any individual policy or contract of life insurance, or limiting coverage under or refusing to issue any individual policy or contract of health insurance, for the reason that the insured or applicant for insurance is or has been a victim of domestic violence;	279 280 281 282 283 284

(b) Adding a surcharge or rating factor to a premium of 285
any individual policy or contract of life or health insurance 286
for the reason that the insured or applicant for insurance is or 287
has been a victim of domestic violence; 288

(c) Denying coverage under, or limiting coverage under, 289
any policy or contract of life or health insurance, for the 290
reason that a claim under the policy or contract arises from an 291
incident of domestic violence; 292

(d) Inquiring, directly or indirectly, of an insured 293
under, or of an applicant for, a policy or contract of life or 294
health insurance, as to whether the insured or applicant is or 295
has been a victim of domestic violence, or inquiring as to 296
whether the insured or applicant has sought shelter or 297
protection from domestic violence or has sought medical or 298
psychological treatment as a victim of domestic violence. 299

(2) Nothing in division (Y) (1) of this section shall be 300
construed to prohibit an insurer from inquiring as to, or from 301
underwriting or rating a risk on the basis of, a person's 302
physical or mental condition, even if the condition has been 303
caused by domestic violence, provided that all of the following 304
apply: 305

(a) The insurer routinely considers the condition in 306
underwriting or in rating risks, and does so in the same manner 307
for a victim of domestic violence as for an insured or applicant 308
who is not a victim of domestic violence; 309

(b) The insurer does not refuse to issue any policy or 310
contract of life or health insurance or cancel or refuse to 311
renew any policy or contract of life insurance, solely on the 312
basis of the condition, except where such refusal to issue, 313

cancellation, or refusal to renew is based on sound actuarial 314
principles or is related to actual or reasonably anticipated 315
experience; 316

(c) The insurer does not consider a person's status as 317
being or as having been a victim of domestic violence, in 318
itself, to be a physical or mental condition; 319

(d) The underwriting or rating of a risk on the basis of 320
the condition is not used to evade the intent of division (Y) (1) 321
of this section, or of any other provision of the Revised Code. 322

(3) (a) Nothing in division (Y) (1) of this section shall be 323
construed to prohibit an insurer from refusing to issue a policy 324
or contract of life insurance insuring the life of a person who 325
is or has been a victim of domestic violence if the person who 326
committed the act of domestic violence is the applicant for the 327
insurance or would be the owner of the insurance policy or 328
contract. 329

(b) Nothing in division (Y) (2) of this section shall be 330
construed to permit an insurer to cancel or refuse to renew any 331
policy or contract of health insurance in violation of the 332
"Health Insurance Portability and Accountability Act of 1996," 333
110 Stat. 1955, 42 U.S.C.A. 300gg-41(b), as amended, or in a 334
manner that violates or is inconsistent with any provision of 335
the Revised Code that implements the "Health Insurance 336
Portability and Accountability Act of 1996." 337

(4) An insurer is immune from any civil or criminal 338
liability that otherwise might be incurred or imposed as a 339
result of any action taken by the insurer to comply with 340
division (Y) of this section. 341

(5) As used in division (Y) of this section, "domestic 342

violence" means any of the following acts:	343
(a) Knowingly causing or attempting to cause physical harm to a family or household member;	344 345
(b) Recklessly causing serious physical harm to a family or household member;	346 347
(c) Knowingly causing, by threat of force, a family or household member to believe that the person will cause imminent physical harm to the family or household member.	348 349 350
For the purpose of division (Y) (5) of this section, "family or household member" has the same meaning as in section 2919.25 of the Revised Code.	351 352 353
Nothing in division (Y) (5) of this section shall be construed to require, as a condition to the application of division (Y) of this section, that the act described in division (Y) (5) of this section be the basis of a criminal prosecution.	354 355 356 357
(Z) Disclosing a coroner's records by an insurer in violation of section 313.10 of the Revised Code.	358 359
(AA) Making, issuing, circulating, or causing or permitting to be made, issued, or circulated any statement or representation that a life insurance policy or annuity is a contract for the purchase of funeral goods or services.	360 361 362 363
(BB) With respect to private passenger automobile insurance, charging premium rates that are excessive, inadequate, or unfairly discriminatory, pursuant to division (D) of section 3937.02 of the Revised Code, based solely on the location of the residence of the insured.	364 365 366 367 368
<u>(CC) Failing to comply with section 3901.80 of the Revised Code.</u>	369 370

The enumeration in sections 3901.19 to 3901.26 of the Revised Code of specific unfair or deceptive acts or practices in the business of insurance is not exclusive or restrictive or intended to limit the powers of the superintendent of insurance to adopt rules to implement this section, or to take action under other sections of the Revised Code.

This section does not prohibit the sale of shares of any investment company registered under the "Investment Company Act of 1940," 54 Stat. 789, 15 U.S.C.A. 80a-1, as amended, or any policies, annuities, or other contracts described in section 3907.15 of the Revised Code.

As used in this section, "estimate," "statement," "representation," "misrepresentation," "advertisement," or "announcement" includes oral or written occurrences.

Sec. 3901.80. (A) As used in this section:

(1) "Emergency services" has the same meaning as in section 1753.28 of the Revised Code.

(2) "Health benefit plan" and "health plan issuer" have the same meanings as in section 3922.01 of the Revised Code.

(3) "Selective emergency services coverage" means any practice of making coverage for emergency services dependent upon a determination of whether or not an injury, symptom, or complaint was truly an emergency.

(B) A health plan issuer shall not implement any form of selective emergency services coverage in regards to any health benefit plan.

(C) Failure to comply with this section shall be considered an unfair or deceptive practice in the business of

<u>insurance for the purposes of sections 3901.19 to 3901.23 of the</u>	399
<u>Revised Code.</u>	400
<u>Sec. 5167.15. Each contract the department of medicaid</u>	401
<u>enters into with a managed care organization under section</u>	402
<u>5167.10 of the Revised Code shall require the managed care</u>	403
<u>organization to comply with the requirements of section 3901.80</u>	404
<u>of the Revised Code.</u>	405
Section 2. That existing section 3901.21 of the Revised	406
Code is hereby repealed.	407
Section 3. Section 3901.80 of the Revised Code shall apply	408
to health benefit plans issued, or contracts entered into,	409
modified, or renewed, on and after the effective date of this	410
act. Section 5167.15 of the Revised Code, as enacted by this	411
act, applies to contracts the Department of Medicaid enters into	412
with Medicaid managed care organizations on or after the	413
effective date of this act.	414