

# Ohio House Votes to Override 11 of Governor's Vetoes

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Governmental Services

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The Ohio House met today in a rare veto override session, with the much-anticipated override of Gov. John Kasich's Medicaid enrollment veto failing to materialize, as the House did not bring that item up for consideration.

Instead, the House overrode 11 of the 47 items vetoed by the governor. Listed below is what the House voted this morning to override, with some items gaining bipartisan support. Each item to be overridden was voted on separately.

The House concluded the veto discussion by leaving the remaining items on the veto list as "pending," meaning that the House may take up and vote to override veto messages (including the Medicaid freeze provision) at a later date. Legislative leaders have said that they have until Dec. 31, 2018, to consider these items.

Next move for these 11 items is in the Ohio Senate, where a three-fifths majority will be necessary for final passage. If these items gain the support necessary in the Senate, the governor's vetoes will be overridden and the items will remain part of the budget over the governor's objections.

Below is a synopsis of what the House voted to override, taken from the governor's veto message.

## **ITEM NUMBER 3 (Passed 65-30)**

### **Controlling Board Authority**

This provision severely limits the power of the Controlling Board to determine amounts by which appropriations may be adjusted and to create new funds. As such, this represents a significant impediment to the authority and effectiveness of the Controlling Board, which could potentially have a negative impact on state agencies' ability to respond in a timely fashion to issues of emerging or urgent concern. Therefore, this veto is in the public interest.

## **ITEM NUMBER 23 (Passed 65-30)**

### **Medicaid Coverage of Optional Eligibility Groups**

This provision would prohibit the Department of Medicaid from covering any new, optional groups

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unless expressly permitted by statute. Because federal law requires there to be a single state agency charged with administering the Medicaid program in each state, this provision – by ceding a portion of the Director of Medicaid’s authority to the Legislature – violates that federal requirement and imposes on the Director’s executive authority to manage the state’s Medicaid program. Therefore, this veto is in the public interest.

## **ITEM NUMBER 25 (Passed 66-30)**

### **Legislative Oversight of Rules Increasing Medicaid Rates**

This provision would require the Department of Medicaid to submit any proposal for an increase in a Medicaid payment rate to the Joint Medicaid Oversight Committee (JMOC) and prohibits the Department from making an increase if it fails to make the required submission, if JMOC votes to prohibit the rate increase, or if the General Assembly adopts a concurrent resolution to prohibit it. This obstructs the Medicaid director’s executive authority to effectively and efficiently manage Ohio’s Medicaid program and to maintain the fiscal and programmatic integrity the Administration has established for that program. Furthermore, this language fundamentally changes the nature of JMOC and its relationship to the Department of Medicaid while negatively impacting the Department’s efforts to implement key policy initiatives. Therefore, this veto is in the public interest.

## **ITEM NUMBER 26 (Passed 96-0)**

### **Medicaid Rates for Neonatal and Newborn Services**

This provision would require that the Department of Medicaid set rates for certain neonatal and newborn services at levels equal to 75 percent of the Medicare rates for those services, and forces the Medicaid director to reduce the rates for other services to avoid an increase in Medicaid expenditures. This provision threatens access to services for some of the most vulnerable Ohioans and limits the ability of the director to effectively and efficiently manage the Medicaid program. Therefore, the veto of this item is in the public interest.

## **ITEM NUMBER 27 (Passed 96-1)**

### **Medicaid Rates for Nursing Facilities**

This provision would make numerous changes in the formula used to determine Medicaid payment rates for nursing facility services, including eliminating portions of the reimbursement formula that are focused on quality and accountability measures. This provision imposes on the Medicaid director’s executive authority to effectively and efficiently manage Ohio’s Medicaid program and to maintain the fiscal and programmatic integrity the Administration has established for that program by restricting the Director’s ability to establish rates that best ensure the quality and efficiency of Medicaid nursing facility programs. Therefore, this veto is in the public interest.

## **ITEM NUMBER 30 (Passed 95-2)**

### **Long-Term Services Added to Medicaid Managed Care**

This provision would prohibit nursing facilities, as well as home and community-based waiver services, with limited exceptions, from being added to Medicaid managed care at any time prior to the General Assembly enacting legislation authorizing the addition. This provision also creates a

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temporary study committee to examine the merits of including these services in the managed care system. By unnecessarily delaying the Department of Medicaid's ability to move Ohioans receiving these services into managed care, this provision would unreasonably delay or even totally deny the benefits of care coordination to Medicaid recipients with the most complex needs, as well as deny Ohio taxpayers the benefit of the increased efficiency provided by managed care models of care delivery. Such models have already proven to improve value and quality for both Ohio taxpayers and the vulnerable Ohioans who depend on Medicaid. Therefore, this veto is in the public interest.

### **ITEM NUMBER 31 (Passed 95-2)**

#### **Behavioral Health Redesign**

This provision would require the Ohio Department of Medicaid to delay the addition of behavioral health services into managed care until July 1, 2018. The department's Behavioral Health Redesign is intended to provide high intensity services for those most in need and ensure for the first time that individuals' mental and physical health needs are managed together, and not with disregard to, one another. This coordination is necessary to get the right services at the right time to the Ohioans who need them most. The Administration, providers, Medicaid managed care plans and county boards have been working on the development of the behavioral health benefit package since early 2014. While the Administration supports a delay in coding changes to January 1, 2018, the care coordination delays mandated by this provision will impose new costs on Ohio taxpayers and private sector providers who have invested in preparing for the anticipated effective date. More significantly, the delay will be detrimental to individuals who would benefit the most from receiving coordinated behavioral health services. Therefore, this veto is in the public interest.

### **ITEM NUMBER 33 (Passed 87-10)**

#### **Health Insuring Corporation Franchise Fee**

This provision would require the Department of Medicaid to ask the United States Centers for Medicare and Medicaid services whether the franchise fee may be increased through the health insuring corporation (HIC) franchise fee and, if the fee may be so increased, to request approval for the increase. The Department was approved for a HIC waiver after demonstrating compliance with federal requirements, including that the tax be broad based and not violate hold-harmless provisions. Requesting a change puts the approved waiver in jeopardy and risks the loss of the \$615 million net benefit currently permitted by the waiver. Further, the Executive budget already provided transition payments for counties as they adjust their budgets in preparation for the end of the existing tax. Therefore, this veto is in the public interest.

### **ITEM NUMBER 34 (Passed 66-30)**

#### **Controlling Board Authorization Regarding Medicaid Expenditures**

This provision requires the director of Budget and Management to transfer monies from the General Revenue Fund to the Health and Human Services Fund and requires the Medicaid director to request the Controlling Board to authorize expenditures from the Health and Human Services fund for purposes of paying for the Medicaid program. While the Administration does not oppose this requirement, the provision also restricts the Controlling Board from releasing funds if the United States Congress amends the federal law governing the federal medical assistance percentage in a manner that reduces the percentage, even if that reduction has no impact in the current biennium.

This limits the ability of the Medicaid director to effectively and efficiently manage the Medicaid program and obstructs the Administration's authority to maintain the fiscal stability and programmatic integrity that it has successfully established for the program. Therefore, the veto of this item is in the public interest.

## **ITEM NUMBER 36 (Passed 66-31)**

### **Waiver Regarding Healthy Ohio Program**

This provision mandates that the Department of Medicaid request the same waiver to implement the Healthy Ohio program which was previously denied by the Centers for Medicare and Medicaid Services. The Administration shares the goal of expanding Ohio's flexibility in managing our Medicaid programs, and is committed to working with the General Assembly to seek achievable solutions that would accomplish this goal. Requiring Medicaid to seek an identical waiver for the Healthy Ohio program would be duplicative and an ill-advised use of Medicaid resources. Therefore, this veto is in the public interest.

## **ITEM NUMBER 37 (Passed 67-29)**

### **Oil and Gas Leasing Commission Appointments**

This provision would transfer appointment authority for members of the Ohio Oil and Gas Leasing Commission from the governor to the General Assembly. This creates the potential for conflicts in how public lands under the jurisdiction of executive branch agencies are utilized. No provision is made for how those conflicts would be resolved or how utilization policies would be harmonized, which could potentially lead to harm to Ohio's public lands. Therefore, this veto is in the public interest.

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