

STATE BUDGET UPDATE: In a Historic Move, House Votes to Override 11 of the Governor's Vetoes from State Budget

By ***Madison Lisotto Whalen***, Associate

The last time the Legislature voted to override multiple state budget vetoes was exactly forty (40) years ago to this day on July 6, 1977 under then Governor James Rhodes (R) and former longtime House Speaker Vern Riffe (D). However, just this morning, the Ohio House of Representatives voted to override eleven (11) of the forty-seven (47) budget vetoes penned by Governor John Kasich (R) last Friday when he signed the budget.

A veto override requires three-fifths of each chamber, equating to 60 votes in the 99-member House, and 20 votes in the 33-member Senate. The Legislature has the entirety of the legislative session to override a veto, meaning the Senate can vote at any time until December 31, 2018 to complete the veto overrides. Although there has been considerable dialogue regarding the Legislature's desire to override the Governor's veto of the Medicaid expansion freeze, there was no action taken by the House to move forward with the legislatively inserted freeze. Nevertheless, eight (8) of the eleven (11) vetoes were related to the Medicaid program in Ohio. For a full list of the House veto overrides, see below.

1. Medicaid coverage of optional eligibility groups

This provision prohibits the Department of Medicaid from covering any new, optional groups unless expressly permitted by statute. The Governor vetoed this provision because federal law requires a single state agency to administer the Medicaid program and by giving the Legislature authority over the Medicaid program, he believes it violates federal law. This veto was overridden by a vote of 65-30.

2. Legislative oversight of rules increasing Medicaid rates

This provision requires 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. The Governor vetoed this provision because stating it obstructs the Medicaid Director's executive authority to effectively and efficiently manage Ohio's Medicaid program. This veto was overridden by a vote of 66-30.

3. Neonatal Medicaid Rates

This provision requires the Department of Medicaid to set rates for certain neonatal and newborn services at levels equal to 75% of the Medicare rate for those services, and also requires the Medicaid Director to reduce the rates for other services to avoid an increase in Medicaid expenditures. The Governor vetoed this provision because he believes it threatens access to services for the most vulnerable Ohioans. This veto was overridden by a vote of 96-1.

4. Medicaid rates for nursing homes

This provision makes 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. The Governor vetoed this provision stating that it again imposes on the Medicaid Director's executive authority and ability to run an efficient and effective Medicaid program. This veto was overridden unanimously.

5. Long-term services added to Medicaid Managed Care (MLTSS)

This provision prohibits nursing facilities, and home and community-based waiver services from being added to Medicaid managed care without the General Assembly enacting legislation authorizing the addition. The Governor vetoed this provision citing that it is an unnecessary delay on the Department of Medicaid's ability to move Ohioans receiving these services into managed care and potentially denying the benefits of care coordination to Medicaid recipients with the most complex needs. This veto was overridden by a vote of 95-2.

6. Delaying behavioral health redesign

This provision requires the Ohio Department of Medicaid to delay the addition of behavioral health services into managed care until July 1, 2018. The Governor vetoed this provision stating 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. This veto was overridden by a vote of 95-2.

7. Health insuring Corporation Franchise Fee (MCO sales tax fix for counties)

This provision requires 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 approved, to request the increase. The increased monies would then be used as a six-year proposed fix for counties and transit authorities that stand to lose several million because of an eliminated sales tax eliminated on Medicaid managed care organizations. The Governor vetoed this provision citing the requested change could put Ohio's already approved Medicaid expansion waiver in jeopardy, risking the loss of \$615 million net benefit currently permitted by the waiver. This veto was overridden by a vote of 87-10.

8. Waiver regarding healthy Ohio program

This provision mandates that the Department of Medicaid request a waiver to implement the Healthy Ohio program, which was previously denied by the Centers for Medicare and Medicaid Services. The Governor vetoed this provision stating that requiring Medicaid to seek an identical waiver for the Healthy Ohio program would be duplicative and an ill-advised use of Medicaid resources. This veto was overridden by a vote of 66-31.

9. 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. The Governor vetoed this provision stating that it creates potential conflicts in how public lands under the jurisdiction of executive branch agencies are utilized. This veto was overridden by a vote of 66-31.

10. General Controlling Board authority

This provision prohibits the Controlling Board from authorizing expenditures of unanticipated state revenue up to 0.5% of the General Revenue Fund appropriations for that fiscal year. The Controlling Board is mechanism for handling necessary adjustments to the state budget consisting of seven members of the Legislature and the Director of the Office of Budget and Management. Essentially, this provision limits the power of the Controlling Board from deviating from the amount of budgeted funds as passed by the Legislature. The Governor vetoed this provision stating that it could significantly impede the effectiveness of the Controlling Board to respond in a timely fashion to issues of emerging or urgent concern. This veto was overridden by a vote of 65-30.

11. Controlling Board authorization regarding Medicaid Expenditures

This provision requires the Director of the Office 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. The Governor vetoed this provision because it restricts the Controlling Board from releasing funds if the United States Congress amends the federal law reducing the federal medical assistance percentage. This veto was overridden by a vote of 66-31.

We will keep you apprised if the Senate takes action. In the meantime, if you have questions about these public policy changes, please contact any of the listed Roetzel attorneys.

Author

Madison Lisotto Whalen
mwhalen@ralaw.com

Additional Contacts

Lewis W. Adkins, Jr.
ladkins@ralaw.com

Melissa R. Hoeffel
mhoeffel@ralaw.com

Daniel G. Hilson
dhilson@ralaw.com

Media Contact

Ashley McCool
amccool@ralaw.com