As Introduced

133rd General Assembly

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Representatives Clites, Carruthers

Cosponsors: Representatives Crossman, Ginter, Lepore-Hagan, Lipps, Miranda, O'Brien, Russo, Weinstein, West

A BILL

To amend section 5167.12 and to enact sections 3902.50 and 5164.092 of the Revised Code regarding prescription drugs and medication switching.

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

Section 1. That section 5167.12 be amended and sections 3902.50 and 5164.092 of the Revised Code be enacted to read as follows:

Sec. 3902.50. (A) As used in this section:

(1) "Cost-sharing" means the cost to a covered person under a health benefit plan according to any coverage limit, copayment, coinsurance, deductible, or other out-of-pocket expense requirement.

(2) "Covered person," "health benefit plan," "health care provider" or "provider," "health plan issuer," and "health care services" have the same meanings as in section 3922.01 of the Revised Code.

(3) "Prior authorization requirement" means any practice implemented by a health plan issuer in which coverage of a health care service, device, or drug is dependent upon a covered person or a health care provider obtaining approval from the health plan issuer prior to the service, device, or drug being performed, received, or prescribed, as applicable. "Prior authorization" includes prospective or utilization review procedures conducted prior to providing a health care service, device, or drug.

(B) A health plan issuer shall not do any of the following during a plan year:

(1) Increase a covered person's burden of cost-sharing with respect to a drug;

(2) Move a drug to a more restrictive tier of a health benefit plan's formulary;

(3) Remove a drug from a health benefit plan's formulary unless one of the following occurred:

(a) The United States food and drug administration issued a statement about the drug calling into question the clinical safety of the drug.

(b) The drug manufacturer notified the United States food and drug administration of a permanent discontinuance or interruption of the manufacture of the drug as required by 21 U.S.C. 356c.

(c) The drug manufacturer has removed the drug from sale in the United States.

(4) Limit or reduce coverage of a drug with respect to a covered person in any other way, including subjecting it to a

prior authorization requirement.

(C) This section shall not be construed to do any of the following:

(1) Prevent a health plan issuer from adding a drug to its formulary;

(2) Prevent a health plan issuer from removing a drug from its formulary if the drug manufacturer has removed the drug from sale in the United States;

(3) Prevent a health care provider from prescribing another drug covered by the health benefit plan that the provider considers medically appropriate for the covered person;

(4) Prevent a pharmacist from substituting for the prescribed drug a generically equivalent drug or interchangeable biological product in accordance with section 4729.38 of the Revised Code;

(5) Prevent a pharmacist from substituting for a prescribed epinephrine autoinjector another epinephrine autoinjector pursuant to section 4729.382 of the Revised Code.

(D) A violation of this section shall be considered an unfair and deceptive practice in the business of insurance for the purposes of section 3901.21 of the Revised Code.

(E) This section shall not be subject to section 3901.71 of the Revised Code.

Sec. 5164.092. (A) The medicaid program shall not remove a drug from its prescribed drug formulary, unless any of the following occurs:

(1) The United States food and drug administration has

issued a warning statement about the drug calling into question the clinical safety of the drug.

(2) The drug manufacturer notified the United States food and drug administration of the discontinuance of the drug under section 506c of the "Federal Food, Drug, and Cosmetic Act," 21 U.S.C. 356c.

(3) The drug manufacturer has removed the drug from sale in the United States.

(B) This section shall not be construed to do either of the following:

(1) Prevent the department from adding a drug to its formulary;

(2) Prevent the department from removing a drug from its formulary if the drug manufacturer has removed the drug from sale in the United States.

Sec. 5167.12. (A) When contracting under section 5167.10 of the Revised Code with a managed care organization that is a health insuring corporation, the department of medicaid shall require the health insuring corporation to provide coverage of prescribed drugs for medicaid recipients enrolled in the health insuring corporation. In providing the required coverage, the health insuring corporation may use strategies for the management of drug utilization, but any such strategies are subject to the limitations and requirements of this section and the department's approval.

(B) The department shall not permit a health insuring corporation to impose a prior authorization requirement in the case of a drug to which all of the following apply:

(1) The drug is an antidepressant or antipsychotic.

(2) The drug is administered or dispensed in a standard tablet or capsule form, except that in the case of an antipsychotic, the drug also may be administered or dispensed in a long-acting injectable form.

(3) The drug is prescribed by any of the following:

(a) A physician who is allowed by the health insuring corporation to provide care as a psychiatrist through its credentialing process, as described in division (C) of section 5167.10 of the Revised Code;

(b) A psychiatrist who is practicing at a location on behalf of a community mental health services provider whose mental health services are certified by the department of mental health and addiction services under section 5119.36 of the Revised Code;

(c) A certified nurse practitioner, as defined in section 4723.01 of the Revised Code, who is certified in psychiatric mental health by a national certifying organization approved by the board of nursing under section 4723.46 of the Revised Code;

(d) A clinical nurse specialist, as defined in section 4723.01 of the Revised Code, who is certified in psychiatric mental health by a national certifying organization approved by the board of nursing under section 4723.46 of the Revised Code.

(4) The drug is prescribed for a use that is indicated on the drug's labeling, as approved by the federal food and drug administration.

(C) Subject to division (E) of this section, the department shall authorize a health insuring corporation to

develop and implement a pharmacy utilization management program under which prior authorization through the program is established as a condition of obtaining a controlled substance pursuant to a prescription.

(D) The department shall require a health insuring corporation to comply with sections 5164.091, 5164.092, 5164.7511, 5164.7512, and 5164.7514 of the Revised Code, as if the health insuring corporation were the department.

Section 2. That existing section 5167.12 of the Revised Code is hereby repealed.

Section 3. This act shall apply to health benefit plans, as defined in section 3922.01 of the Revised Code, delivered, issued for delivery, modified, or renewed on or after the effective date of this act.