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Sub. H. B. No. 248

Representatives Sprague, Antonio

**Cosponsors: Representatives Driehaus, Green, Johnson, T., Lepore-Hagan,
Reineke, Rezabek, Rogers, Smith, K., Barnes, Schuring**

A BILL

To amend sections 1739.05 and 5167.12 and to enact 1
sections 1751.691, 3923.851, and 5164.091 of the 2
Revised Code regarding health insurance, 3
Medicaid, and opioid analgesic drug products. 4

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

Section 1. That sections 1739.05 and 5167.12 be amended 5
and sections 1751.691, 3923.851, and 5164.091 of the Revised 6
Code be enacted to read as follows: 7

Sec. 1739.05. (A) A multiple employer welfare arrangement 8
that is created pursuant to sections 1739.01 to 1739.22 of the 9
Revised Code and that operates a group self-insurance program 10
may be established only if any of the following applies: 11

(1) The arrangement has and maintains a minimum enrollment 12
of three hundred employees of two or more employers. 13

(2) The arrangement has and maintains a minimum enrollment 14
of three hundred self-employed individuals. 15

(3) The arrangement has and maintains a minimum enrollment 16

of three hundred employees or self-employed individuals in any 17
combination of divisions (A) (1) and (2) of this section. 18

(B) A multiple employer welfare arrangement that is 19
created pursuant to sections 1739.01 to 1739.22 of the Revised 20
Code and that operates a group self-insurance program shall 21
comply with all laws applicable to self-funded programs in this 22
state, including sections 3901.04, 3901.041, 3901.19 to 3901.26, 23
3901.38, 3901.381 to 3901.3814, 3901.40, 3901.45, 3901.46, 24
3901.491, 3902.01 to 3902.14, 3923.24, 3923.282, 3923.30, 25
3923.301, 3923.38, 3923.581, 3923.63, 3923.80, 3923.85, 26
3923.851, 3924.031, 3924.032, and 3924.27 of the Revised Code. 27

(C) A multiple employer welfare arrangement created 28
pursuant to sections 1739.01 to 1739.22 of the Revised Code 29
shall solicit enrollments only through agents or solicitors 30
licensed pursuant to Chapter 3905. of the Revised Code to sell 31
or solicit sickness and accident insurance. 32

(D) A multiple employer welfare arrangement created 33
pursuant to sections 1739.01 to 1739.22 of the Revised Code 34
shall provide benefits only to individuals who are members, 35
employees of members, or the dependents of members or employees, 36
or are eligible for continuation of coverage under section 37
1751.53 or 3923.38 of the Revised Code or under Title X of the 38
"Consolidated Omnibus Budget Reconciliation Act of 1985," 100 39
Stat. 227, 29 U.S.C.A. 1161, as amended. 40

(E) A multiple employer welfare arrangement created 41
pursuant to sections 1739.01 to 1739.22 of the Revised Code is 42
subject to, and shall comply with, sections 3903.81 to 3903.93 43
of the Revised Code in the same manner as other life or health 44
insurers, as defined in section 3903.81 of the Revised Code. 45

Sec. 1751.691. (A) As used in this section: 46

(1) "Abuse-deterrent opioid analgesic drug product" means 47
a brand or generic opioid analgesic drug product approved by the 48
United States food and drug administration with abuse-deterrence 49
labeling claims indicating its abuse-deterrent properties are 50
expected to deter or reduce its abuse. 51

(2) "Benzodiazepine" has the same meaning as in section 52
3719.01 of the Revised Code. 53

(3) "Chronic pain" has the same meaning as in section 54
4731.052 of the Revised Code. 55

(4) "Opioid analgesic" has the same meaning as in section 56
3719.01 of the Revised Code. 57

(5) "Prescriber" has the same meaning as in section 58
4729.01 of the Revised Code. 59

(6) "Terminal condition" means an irreversible, incurable, 60
and untreatable condition caused by disease, illness, or injury 61
which will likely result in death. A terminal condition is one 62
in which there can be no recovery, although there may be periods 63
of remission. 64

(B) Notwithstanding section 3901.71 of the Revised Code, 65
an individual or group health insuring corporation policy, 66
contract, or agreement that is delivered, issued for delivery, 67
or renewed in this state and covers opioid analgesic drug 68
products as part of providing any coverage of prescription drugs 69
shall provide access to abuse-deterrent opioid analgesic drug 70
products in the drug formulary or other list of covered drugs 71
that applies under the policy, contract, or agreement. 72

(C) Both of the following apply to any prior authorization 73

requirements or utilization review measures contained in a 74
health insuring corporation policy, contract, or agreement 75
subject to this section and any coverage denials made pursuant 76
to those requirements or measures with respect to opioid 77
analgesic drug products: 78

(1) Prior authorization requirements or utilization 79
measures shall not be any more restrictive for abuse-deterrent 80
opioid analgesic drug products than for opioid analgesic drug 81
products that are not abuse-deterrent opioid analgesic drug 82
products. 83

(2) Prior authorization requirements or utilization 84
measures shall not require treatment with an opioid analgesic 85
drug product that is not an abuse-deterrent opioid analgesic 86
drug product in order to access an abuse-deterrent opioid 87
analgesic drug product. 88

(D) This section shall not be construed to prevent a 89
health insuring corporation from applying utilization review 90
requirements to abuse-deterrent opioid analgesic drug products, 91
including prior authorization or non-opioid analgesic drug step 92
therapy, provided that the same requirements are applied to all 93
opioid analgesic drug products. 94

(E) (1) A health insuring corporation policy, contract, or 95
agreement subject to this section shall contain prior 96
authorization requirements or utilization review measures as 97
conditions of providing coverage of opioid analgesic drug 98
products, including abuse-deterrent opioid analgesic drug 99
products prescribed for the treatment of chronic pain, except 100
when the opioid analgesic drug product is prescribed for or 101
personally furnished to a hospice patient in a hospice care 102
program as those terms are defined in section 3712.01 of the 103

Revised Code or any other patient diagnosed with a terminal 104
condition or when the opioid analgesic drug product is 105
prescribed or personally furnished for the treatment of cancer 106
or another condition associated with cancer. 107

(2) When implementing prior authorization requirements or 108
utilization review measures as required by division (E)(1) of 109
this section, the health insuring corporation shall consider the 110
following: 111

(a) If the course of treatment with the drug continues for 112
more than ninety days, the requirements of section 4731.052 of 113
the Revised Code; 114

(b) If the morphine equivalent daily dose for the drug 115
exceeds eighty milligrams, the guidelines established by the 116
governor's cabinet opiate action team and presented in the 117
document titled "Ohio Guidelines for Prescribing Opioids for the 118
Treatment of Chronic, Non-terminal Pain 80 mg of a Morphine 119
Equivalent Daily Dose (MED) 'Trigger Point'" or a successor 120
document, unless the guidelines are no longer in effect at the 121
time the drug product is prescribed; 122

(c) If the individual is being treated with a 123
benzodiazepine at the time the opioid analgesic drug product is 124
prescribed, the guidelines established by the governor's cabinet 125
opiate action team and presented in the document titled "Ohio 126
Guidelines for Prescribing Opioids for the Treatment of Chronic, 127
Non-terminal Pain 80 mg of a Morphine Equivalent Daily Dose 128
(MED) 'Trigger Point'" or a successor document, unless the 129
guidelines are no longer in effect at the time the drug product 130
is prescribed. 131

(F) If a health insuring corporation measures the 132

efficiency, quality of care, or clinical performance of a 133
prescriber, including through the use of patient satisfaction 134
surveys, it shall not penalize the prescriber, financially or 135
otherwise, for either of the following actions: 136

(1) Prescribing an abuse-deterrent opioid analgesic drug 137
product; 138

(2) Deciding not to prescribe any opioid analgesic drug 139
product. 140

Sec. 3923.851. (A) As used in this section: 141

(1) "Abuse-deterrent opioid analgesic drug product" means 142
a brand or generic opioid analgesic drug product approved by the 143
United States food and drug administration with abuse-deterrence 144
labeling claims indicating its abuse-deterrent properties are 145
expected to deter or reduce its abuse. 146

(2) "Benzodiazepine" has the same meaning as in section 147
3719.01 of the Revised Code. 148

(3) "Chronic pain" has the same meaning as in section 149
4731.052 of the Revised Code. 150

(4) "Opioid analgesic" has the same meaning as in section 151
3719.01 of the Revised Code. 152

(5) "Prescriber" has the same meaning as in section 153
4729.01 of the Revised Code. 154

(6) "Terminal condition" means an irreversible, incurable, 155
and untreatable condition caused by disease, illness, or injury 156
which will likely result in death. A terminal condition is one 157
in which there can be no recovery, although there may be periods 158
of remission. 159

(B) Notwithstanding section 3901.71 of the Revised Code, 160
an individual or group policy of sickness and accident insurance 161
or a public employee benefit plan that is delivered, issued for 162
delivery, or renewed in this state and covers opioid analgesic 163
drug products as part of providing any coverage of prescription 164
drugs shall provide access to abuse-deterrent opioid analgesic 165
drug products in the drug formulary or other list of covered 166
drugs that applies under the policy or plan. 167

(C) Both of the following apply to any prior authorization 168
requirements or utilization review measures contained in a 169
sickness and accident insurance policy or public employee 170
benefit plan subject to this section and any coverage denials 171
made pursuant to those requirements or measures with respect to 172
opioid analgesic drug products: 173

(1) Prior authorization requirements or utilization 174
measures shall not be any more restrictive for abuse-deterrent 175
opioid analgesic drug products than for opioid analgesic drug 176
products that are not abuse-deterrent opioid analgesic drug 177
products. 178

(2) Prior authorization requirements or utilization 179
measures shall not require treatment with an opioid analgesic 180
drug product that is not an abuse-deterrent opioid analgesic 181
drug product in order to access an abuse-deterrent opioid 182
analgesic drug product. 183

(D) This section shall not be construed to prevent a 184
sickness and accident insurer or public employee benefit plan 185
from applying utilization review requirements to abuse-deterrent 186
opioid analgesic drug products, including prior authorization or 187
non-opioid analgesic drug step therapy, provided that the same 188
requirements are applied to all opioid analgesic drug products. 189

(E) (1) A policy of sickness and accident insurance or 190
public employee benefit plan subject to this section shall 191
contain prior authorization requirements or utilization review 192
measures as conditions of providing coverage of opioid analgesic 193
drug products, including abuse-deterrent opioid analgesic drug 194
products prescribed for the treatment of chronic pain, except 195
when the opioid analgesic drug product is prescribed for or 196
personally furnished to a hospice patient in a hospice care 197
program as those terms are defined in section 3712.01 of the 198
Revised Code or any other patient diagnosed with a terminal 199
condition or when the opioid analgesic drug product is 200
prescribed or personally furnished for the treatment of cancer 201
or another condition associated with cancer. 202

(2) When implementing prior authorization requirements or 203
utilization review measures as required by division (E) (1) of 204
this section, the sickness and accident insurer or public 205
employee benefit plan shall consider the following: 206

(a) If the course of treatment with the drug continues for 207
more than ninety days, the requirements of section 4731.052 of 208
the Revised Code; 209

(b) If the morphine equivalent daily dose for the drug 210
exceeds eighty milligrams, the guidelines established by the 211
governor's cabinet opiate action team and presented in the 212
document titled "Ohio Guidelines for Prescribing Opioids for the 213
Treatment of Chronic, Non-terminal Pain 80 mg of a Morphine 214
Equivalent Daily Dose (MED) 'Trigger Point'" or a successor 215
document, unless the guidelines are no longer in effect at the 216
time the drug product is prescribed; 217

(c) If the individual is being treated with a 218
benzodiazepine at the time the opioid analgesic drug product is 219

prescribed, the guidelines established by the governor's cabinet 220
opiate action team and presented in the document titled "Ohio 221
Guidelines for Prescribing Opioids for the Treatment of Chronic, 222
Non-terminal Pain 80 mg of a Morphine Equivalent Daily Dose 223
(MED) 'Trigger Point'" or a successor document, unless the 224
guidelines are no longer in effect at the time the drug product 225
is prescribed. 226

(F) If a sickness and accident insurer or public employee 227
benefit plan measures the efficiency, quality of care, or 228
clinical performance of a prescriber, including through the use 229
of patient satisfaction surveys, it shall not penalize the 230
prescriber, financially or otherwise, for either of the 231
following actions: 232

(1) Prescribing an abuse-deterrent opioid analgesic drug 233
product; 234

(2) Deciding not to prescribe any opioid analgesic drug 235
product. 236

Sec. 5164.091. (A) As used in this section: 237

(1) "Abuse-deterrent opioid analgesic drug product" means 238
a brand or generic opioid analgesic drug product approved by the 239
United States food and drug administration with abuse-deterrence 240
labeling claims indicating its abuse-deterrent properties are 241
expected to deter or reduce its abuse. 242

(2) "Benzodiazepine" has the same meaning as in section 243
3719.01 of the Revised Code. 244

(3) "Chronic pain" has the same meaning as in section 245
4731.052 of the Revised Code. 246

(4) "Opioid analgesic" has the same meaning as in section 247

<u>3719.01 of the Revised Code.</u>	248
<u>(5) "Prescriber" has the same meaning as in section</u>	249
<u>4729.01 of the Revised Code.</u>	250
<u>(6) "Terminal condition" means an irreversible, incurable,</u>	251
<u>and untreatable condition caused by disease, illness, or injury</u>	252
<u>which will likely result in death. A terminal condition is one</u>	253
<u>in which there can be no recovery, although there may be periods</u>	254
<u>of remission.</u>	255
<u>(B) With respect to the medicaid program's coverage of</u>	256
<u>prescribed drugs, the department of medicaid shall provide</u>	257
<u>access to abuse-deterrent opioid analgesic drug products in the</u>	258
<u>drug formulary or other list of covered drugs that applies under</u>	259
<u>the program.</u>	260
<u>(C) Both of the following apply to any prior authorization</u>	261
<u>requirements or utilization review measures under the medicaid</u>	262
<u>program and any coverage denials made pursuant to those</u>	263
<u>requirements or measures with respect to opioid analgesic drug</u>	264
<u>products:</u>	265
<u>(1) Prior authorization requirements or utilization</u>	266
<u>measures shall not be any more restrictive for abuse-deterrent</u>	267
<u>opioid analgesic drug products than for opioid analgesic drug</u>	268
<u>products that are not abuse-deterrent.</u>	269
<u>(2) Prior authorization requirements or utilization</u>	270
<u>measures shall not require treatment with an opioid analgesic</u>	271
<u>drug product that is not an abuse-deterrent opioid analgesic</u>	272
<u>drug product in order to access an abuse-deterrent opioid</u>	273
<u>analgesic drug product.</u>	274
<u>(D) This section shall not be construed to prevent the</u>	275
<u>department from applying utilization review requirements to</u>	276

abuse-deterrent opioid analgesic drug products, including prior 277
authorization or non-opioid analgesic drug step therapy, 278
provided that the same requirements are applied to all opioid 279
analgesic drug products. 280

(E) (1) The department of medicaid shall apply prior 281
authorization requirements or utilization review measures as 282
conditions of providing coverage of opioid analgesic drug 283
products, including abuse-deterrent opioid analgesic drug 284
products prescribed for the treatment of chronic pain, except 285
when the opioid analgesic drug product is prescribed for or 286
personally furnished to a hospice patient in a hospice care 287
program as those terms are defined in section 3712.01 of the 288
Revised Code or any other patient diagnosed with a terminal 289
condition or when the opioid analgesic drug product is 290
prescribed or personally furnished for the treatment of cancer 291
or another condition associated with cancer. 292

(2) When implementing prior authorization requirements or 293
utilization review measures as required by division (E) (1) of 294
this section, the department shall consider the following: 295

(a) If the course of treatment with the drug continues for 296
more than ninety days, the requirements of section 4731.052 of 297
the Revised Code; 298

(b) If the morphine equivalent daily dose for the drug 299
exceeds eighty milligrams, the guidelines established by the 300
governor's cabinet opiate action team and presented in the 301
document titled "Ohio Guidelines for Prescribing Opioids for the 302
Treatment of Chronic, Non-terminal Pain 80 mg of a Morphine 303
Equivalent Daily Dose (MED) 'Trigger Point' or a successor 304
document, unless the guidelines are no longer in effect at the 305
time the drug product is prescribed; 306

(c) If the individual is being treated with a benzodiazepine at the time the opioid analgesic drug product is prescribed, the guidelines established by the governor's cabinet opiate action team and presented in the document titled "Ohio Guidelines for Prescribing Opioids for the Treatment of Chronic, Non-terminal Pain 80 mg of a Morphine Equivalent Daily Dose (MED) 'Trigger Point'" or a successor document, unless the guidelines are no longer in effect at the time the drug product is prescribed. 307
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(F) If the department measures the efficiency, quality of care, or clinical performance of a prescriber, including through the use of patient satisfaction surveys, it shall not penalize the prescriber, financially or otherwise, for either of the following actions: 316
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(1) Prescribing an abuse-deterrent opioid analgesic drug product; 321
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(2) Deciding not to prescribe any opioid analgesic drug product. 323
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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, subject to the department's approval ~~and, the limitations specified in division (B) of this section, use strategies for the management of drug utilization and the requirements specified in division (C) of this section.~~ 325
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(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 either of the following:

(a) A physician whom the health insuring corporation, pursuant to division (C) of section 5167.10 of the Revised Code, has credentialed to provide care as a psychiatrist;

(b) A psychiatrist practicing at a community mental health services provider certified by the department of mental health and addiction services under section 5119.36 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) The department shall require a health insuring corporation to comply with the requirements of section 5164.091 of the Revised Code as if the health insuring corporation were the department.

(D) The department shall ~~permit~~ 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. The

department's authorization under this division does not affect a 364
health insuring corporation's obligation to comply with the 365
prior authorization procedures that apply as a result of 366
division (C) of this section. 367

Section 2. That existing sections 1739.05 and 5167.12 of 368
the Revised Code are hereby repealed. 369

Section 3. Sections 1739.05 and 1751.691 of the Revised 370
Code, as amended or enacted by this act, apply only to 371
arrangements, policies, contracts, and agreements that are 372
created, delivered, issued for delivery, or renewed in this 373
state on or after January 1, 2017. Section 3923.851 of the 374
Revised Code, as enacted by this act, applies only to policies 375
of sickness and accident insurance delivered, issued for 376
delivery, or renewed in this state on or after January 1, 2017, 377
and only to public employee benefit plans that are established 378
or modified in this state on or after January 1, 2017. Sections 379
5164.091 and 5167.12 of the Revised Code, as amended or enacted 380
by this act, apply to the Medicaid program and health insuring 381
corporations under contract with the Department of Medicaid on 382
or after January 1, 2017. 383