

**As Introduced**

**131st General Assembly**

**Regular Session**

**2015-2016**

**H. B. No. 248**

**Representatives Sprague, Antonio**

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

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**A BILL**

To amend sections 1739.05 and 5167.12 and to enact  
sections 1751.691, 3923.851, and 5164.091 of the  
Revised Code to prohibit certain health care  
plans and the Medicaid program from denying  
coverage for opioid analgesic drugs with abuse-  
deterrent technology based solely on cost.

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

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

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

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

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

(3) The arrangement has and maintains a minimum enrollment of three hundred employees or self-employed individuals in any combination of divisions (A) (1) and (2) of this section.

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

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

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

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

(1) "Abuse-deterrent opioid analgesic drug" means a brand or generic opioid analgesic drug product that is approved by the United States food and drug administration and that has labeling

claims that indicate that the drug product is expected to result 47  
in a meaningful reduction in abuse. 48

(2) "Cost-sharing" has the same meaning as in section 49  
1751.69 of the Revised Code. 50

(3) "Opioid analgesic drug" means a prescribed drug 51  
product that contains an opioid agonist and that is indicated by 52  
the United States food and drug administration for the treatment 53  
of pain, whether in an immediate-release or extended-release 54  
formulation and whether or not the drug product contains other 55  
drug substances. 56

(B) (1) Notwithstanding section 3901.71 of the Revised 57  
Code, an individual or group health insuring corporation policy, 58  
contract, or agreement providing prescription drug coverage 59  
shall provide coverage for all abuse-deterrent opioid analgesic 60  
drugs. 61

(2) Notwithstanding section 4729.38 of the Revised Code, 62  
the policy, contract, or agreement shall not exclude or deny 63  
reimbursement for an abuse-deterrent opioid analgesic drug 64  
solely due to the cost of the drug. 65

(C) Any prior authorization requirements or utilization 66  
review measures contained in a policy, contract, or agreement 67  
for opioid analgesic drugs, and any coverage denials made 68  
pursuant to those requirements or measures, shall not require 69  
treatment failure of nonabuse-deterrent opioid analgesic drugs 70  
in order to access abuse-deterrent opioid analgesic drugs. 71

(D) Any cost-sharing requirements for benefits provided 72  
under division (B) of this section shall not exceed the lowest 73  
cost-sharing requirements applied to opioid analgesic drugs 74  
without abuse-deterrent properties. 75

A policy, contract, or agreement shall not achieve 76  
compliance with this division by increasing prescription cost- 77  
sharing requirements. 78

(E) If a health insuring corporation measures a 79  
prescriber's efficiency, quality of care, or clinical 80  
performance through the use of patient satisfaction surveys or 81  
other means, the health insuring corporation shall not penalize 82  
the prescriber, financially or otherwise, for either of the 83  
following actions: 84

(1) Prescribing an abuse-deterrent opioid analgesic drug; 85

(2) A decision not to prescribe an opioid analgesic drug. 86

**Sec. 3923.851.** (A) As used in this section: 87

(1) "Abuse-deterrent opioid analgesic drug" means a brand 88  
or generic opioid analgesic drug product that is approved by the 89  
United States food and drug administration and that has labeling 90  
claims that indicate that the drug product is expected to result 91  
in a meaningful reduction in abuse. 92

(2) "Cost-sharing" has the same meaning as in section 93  
3923.85 of the Revised Code. 94

(3) "Opioid analgesic drug" means a prescribed drug 95  
product that contains an opioid agonist and that is indicated by 96  
the United States food and drug administration for the treatment 97  
of pain, whether in an immediate-release or extended-release 98  
formulation and whether or not the drug product contains other 99  
drug substances. 100

(B) (1) Notwithstanding section 3901.71 of the Revised 101  
Code, an individual or group policy of sickness and accident 102  
insurance or a public employee benefit plan providing 103

prescription drug coverage shall provide coverage for all abuse- 104  
deterrent opioid analgesic drugs. 105

(2) Notwithstanding section 4729.38 of the Revised Code, 106  
the policy or plan shall not exclude or deny reimbursement for 107  
an abuse-deterrent opioid analgesic drug solely due to the cost 108  
of the drug. 109

(C) Any prior authorization requirements or utilization 110  
review measures contained in a policy or plan for opioid 111  
analgesic drugs, and any coverage denials made pursuant to those 112  
requirements or measures, shall not require treatment failure of 113  
non-abuse-deterrent opioid analgesic drugs in order to access 114  
abuse-deterrent opioid analgesic drugs. 115

(D) Any cost-sharing requirements for benefits provided 116  
under division (B) of this section shall not exceed the lowest 117  
cost-sharing requirements applied to opioid analgesic drugs 118  
without abuse-deterrent properties. 119

A policy or plan shall not achieve compliance with this 120  
division by increasing prescription cost-sharing requirements. 121

(E) If a sickness and accident insurer or public employee 122  
benefit plan measures a prescriber's efficiency, quality of 123  
care, or clinical performance through the use of patient 124  
satisfaction surveys or other means, the insurer or plan shall 125  
not penalize the prescriber, financially or otherwise, for 126  
either of the following actions: 127

(1) Prescribing an abuse-deterrent opioid analgesic drug; 128

(2) A decision not to prescribe an opioid analgesic drug. 129

**Sec. 5164.091.** (A) As used in this section: 130

(1) "Abuse-deterrent opioid analgesic drug" means a brand 131

or generic opioid analgesic drug product that is approved by the 132  
United States food and drug administration and that has labeling 133  
claims that indicate that the drug product is expected to result 134  
in a meaningful reduction in abuse. 135

(2) "Opioid analgesic drug" means a prescribed drug 136  
product that contains an opioid agonist and that is indicated by 137  
the United States food and drug administration for the treatment 138  
of pain, whether in an immediate-release or extended-release 139  
formulation and whether or not the drug product contains other 140  
drug substances. 141

(B) The medicaid program shall cover all abuse-deterrent 142  
opioid analgesic drugs. The medicaid program shall not exclude 143  
or deny payment for an abuse-deterrent opioid analgesic drug 144  
solely due to the cost of the drug. 145

(C) Any prior authorization requirements or utilization 146  
review measures contained in the medicaid program for opioid 147  
analgesic drugs, and any coverage denials made pursuant to those 148  
requirements or measures, shall not require treatment failure of 149  
nonabuse-deterrent opioid analgesic drugs in order to access 150  
abuse-deterrent opioid analgesic drugs. 151

(D) Any cost-sharing requirements established under 152  
section 5162.20 of the Revised Code for abuse-deterrent opioid 153  
analgesic drugs shall not exceed the lowest cost-sharing 154  
requirements for opioid analgesic drugs without abuse-deterrent 155  
properties. 156

The department of medicaid shall not achieve compliance 157  
with this division by increasing prescription cost-sharing 158  
requirements. 159

(E) If the department of medicaid measures a prescriber's 160

efficiency, quality of care, or clinical performance through the 161  
use of patient satisfaction surveys or other means, the program 162  
shall not penalize the prescriber, financially or otherwise, for 163  
either of the following actions: 164

(1) Prescribing an abuse-deterrent opioid analgesic drug; 165

(2) A decision not to prescribe an opioid analgesic drug. 166

**Sec. 5167.12.** (A) When contracting under section 5167.10 167  
of the Revised Code with a managed care organization that is a 168  
health insuring corporation, the department of medicaid shall 169  
require the health insuring corporation to provide coverage of 170  
prescribed drugs for medicaid recipients enrolled in the health 171  
insuring corporation. In providing the required coverage, the 172  
health insuring corporation may, subject to the department's 173  
approval and the limitations specified in division (B) of this 174  
section, use strategies for the management of drug utilization. 175

(B) The department shall not permit a health insuring 176  
corporation to impose a prior authorization requirement in the 177  
case of a drug to which all of the following apply: 178

(1) The drug is an antidepressant or antipsychotic. 179

(2) The drug is administered or dispensed in a standard 180  
tablet or capsule form, except that in the case of an 181  
antipsychotic, the drug also may be administered or dispensed in 182  
a long-acting injectable form. 183

(3) The drug is prescribed by either of the following: 184

(a) A physician whom the health insuring corporation, 185  
pursuant to division (C) of section 5167.10 of the Revised Code, 186  
has credentialed to provide care as a psychiatrist; 187

(b) A psychiatrist practicing at a community mental health 188

services provider certified by the department of mental health 189  
and addiction services under section 5119.36 of the Revised 190  
Code. 191

(4) The drug is prescribed for a use that is indicated on 192  
the drug's labeling, as approved by the federal food and drug 193  
administration. 194

(C) The department shall permit a health insuring 195  
corporation to develop and implement a pharmacy utilization 196  
management program under which prior authorization through the 197  
program is established as a condition of obtaining a controlled 198  
substance pursuant to a prescription. 199

(D) The department shall require a health insuring 200  
corporation to provide coverage of abuse-deterrent opioid 201  
analgesic drugs as required by section 5164.091 of the Revised 202  
Code. 203

**Section 2.** That existing sections 1739.05 and 5167.12 of 204  
the Revised Code are hereby repealed. 205

**Section 3.** Sections 1739.05 and 1751.691 of the Revised 206  
Code, as amended or enacted by this act, apply only to policies, 207  
contracts, and agreements that are delivered, issued for 208  
delivery, or renewed in this state on or after January 1, 2017. 209  
Section 3923.851 of the Revised Code, as enacted by this act, 210  
applies only to policies of sickness and accident insurance 211  
delivered, issued for delivery, or renewed in this state, and 212  
public employee benefit plans that are established or modified 213  
in this state, on or after January 1, 2017. Sections 5164.091 of 214  
the Revised Code, as amended or enacted by this act, apply only 215  
to Medicaid and Medicaid managed plans that are established or 216  
modified in this state on or after January 1, 2017. 217