As Reported by the House Health and Aging Committee

131st General Assembly
Regular Session **Sub. H. B. No. 248**
2015-2016

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 sections 1751.691, 3923.851, and 5164.091 of the Revised Code regarding health insurance, Medicaid, and opioid analgesic drug products.

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, 3901.491, 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) If the morphine equivalent daily dose for the drug exceeds eighty milligrams, 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;

(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.

(F) If a health insuring corporation 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:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) If the morphine equivalent daily dose for the drug exceeds eighty milligrams, 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;

(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.

(F) If a sickness and accident insurer or public employee benefit plan 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:

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

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

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

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

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

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

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

3719.01 of the Revised Code.

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

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

(B) With respect to the medicaid program's coverage of prescribed drugs, the department of medicaid shall provide access to abuse-deterrent opioid analgesic drug products in the drug formulary or other list of covered drugs that applies under the program.

(C) Both of the following apply to any prior authorization requirements or utilization review measures under the medicaid program and any coverage denials made pursuant to those requirements or measures with respect to opioid analgesic drug products:

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

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

(D) This section shall not be construed to prevent the department from applying utilization review requirements to

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

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

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

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

(b) If the morphine equivalent daily dose for the drug exceeds eighty milligrams, 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;

(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.

(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:

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

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

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.

(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 health insuring corporation's obligation to comply with the prior authorization procedures that apply as a result of division (C) of this section.

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

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