

**As Introduced**

**131st General Assembly  
Regular Session  
2015-2016**

**S. B. No. 357**

**Senator Hite**

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**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 abuse-deterrent opioid analgesic 4  
drug products. 5

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

**Section 1.** That sections 1739.05 and 5167.12 be amended 6  
and sections 1751.691, 3923.851, and 5164.091 of the Revised 7  
Code be enacted to read as follows: 8

**Sec. 1739.05.** (A) A multiple employer welfare arrangement 9  
that is created pursuant to sections 1739.01 to 1739.22 of the 10  
Revised Code and that operates a group self-insurance program 11  
may be established only if any of the following applies: 12

(1) The arrangement has and maintains a minimum enrollment 13  
of three hundred employees of two or more employers. 14

(2) The arrangement has and maintains a minimum enrollment 15  
of three hundred self-employed individuals. 16

(3) The arrangement has and maintains a minimum enrollment 17  
of three hundred employees or self-employed individuals in any 18

combination of divisions (A) (1) and (2) of this section. 19

(B) A multiple employer welfare arrangement that is 20  
created pursuant to sections 1739.01 to 1739.22 of the Revised 21  
Code and that operates a group self-insurance program shall 22  
comply with all laws applicable to self-funded programs in this 23  
state, including sections 3901.04, 3901.041, 3901.19 to 3901.26, 24  
3901.38, 3901.381 to 3901.3814, 3901.40, 3901.45, 3901.46, 25  
3901.491, 3902.01 to 3902.14, 3923.24, 3923.282, 3923.30, 26  
3923.301, 3923.38, 3923.581, 3923.63, 3923.80, 3923.85, 27  
3923.851, 3924.031, 3924.032, and 3924.27 of the Revised Code. 28

(C) A multiple employer welfare arrangement created 29  
pursuant to sections 1739.01 to 1739.22 of the Revised Code 30  
shall solicit enrollments only through agents or solicitors 31  
licensed pursuant to Chapter 3905. of the Revised Code to sell 32  
or solicit sickness and accident insurance. 33

(D) A multiple employer welfare arrangement created 34  
pursuant to sections 1739.01 to 1739.22 of the Revised Code 35  
shall provide benefits only to individuals who are members, 36  
employees of members, or the dependents of members or employees, 37  
or are eligible for continuation of coverage under section 38  
1751.53 or 3923.38 of the Revised Code or under Title X of the 39  
"Consolidated Omnibus Budget Reconciliation Act of 1985," 100 40  
Stat. 227, 29 U.S.C.A. 1161, as amended. 41

(E) A multiple employer welfare arrangement created 42  
pursuant to sections 1739.01 to 1739.22 of the Revised Code is 43  
subject to, and shall comply with, sections 3903.81 to 3903.93 44  
of the Revised Code in the same manner as other life or health 45  
insurers, as defined in section 3903.81 of the Revised Code. 46

**Sec. 1751.691.** (A) As used in this section: 47

(1) "Abuse-deterrent opioid analgesic drug product" means 48  
a brand or generic opioid analgesic drug product approved by the 49  
United States food and drug administration with abuse-deterrence 50  
labeling claims indicating its abuse-deterrent properties are 51  
expected to deter or reduce its abuse. 52

(2) "Opioid analgesic" has the same meaning as in section 53  
3719.01 of the Revised Code. 54

(3) "Prescriber" has the same meaning as in section 55  
4729.01 of the Revised Code. 56

(B) Notwithstanding section 3901.71 of the Revised Code, 57  
an individual or group health insuring corporation policy, 58  
contract, or agreement that is delivered, issued for delivery, 59  
or renewed in this state and covers opioid analgesic drug 60  
products as part of providing any coverage of prescription drugs 61  
shall provide access to abuse-deterrent opioid analgesic drug 62  
products in the drug formulary or other list of covered drugs 63  
that applies under the policy, contract, or agreement. 64

(C) Both of the following apply to any prior authorization 65  
requirements or utilization review measures contained in a 66  
health insuring corporation policy, contract, or agreement 67  
subject to this section and any coverage denials made pursuant 68  
to those requirements or measures with respect to opioid 69  
analgesic drug products: 70

(1) Prior authorization requirements or utilization review 71  
measures shall not be any more restrictive for abuse-deterrent 72  
opioid analgesic drug products than for opioid analgesic drug 73  
products that are not abuse-deterrent opioid analgesic drug 74  
products. 75

(2) Prior authorization requirements or utilization review 76

measures shall not require treatment with an opioid analgesic 77  
drug product that is not an abuse-deterrent opioid analgesic 78  
drug product in order to access an abuse-deterrent opioid 79  
analgesic drug product. 80

(D) This section shall not be construed to prevent a 81  
health insuring corporation from applying utilization review 82  
measures to abuse-deterrent opioid analgesic drug products, 83  
including prior authorization requirements or nonopioid 84  
analgesic drug step therapy, provided that the same utilization 85  
review measures are applied to all opioid analgesic drug 86  
products. 87

(E) If a health insuring corporation measures the 88  
efficiency, quality of care, or clinical performance of a 89  
prescriber, including through the use of patient satisfaction 90  
surveys, it shall not penalize the prescriber, financially or 91  
otherwise, for either of the following actions: 92

(1) Prescribing an abuse-deterrent opioid analgesic drug 93  
product; 94

(2) Deciding not to prescribe any opioid analgesic drug 95  
product. 96

**Sec. 3923.851.** (A) As used in this section: 97

(1) "Abuse-deterrent opioid analgesic drug product" means 98  
a brand or generic opioid analgesic drug product approved by the 99  
United States food and drug administration with abuse-deterrence 100  
labeling claims indicating its abuse-deterrent properties are 101  
expected to deter or reduce its abuse. 102

(2) "Opioid analgesic" has the same meaning as in section 103  
3719.01 of the Revised Code. 104

(3) "Prescriber" has the same meaning as in section 105  
4729.01 of the Revised Code. 106

(B) Notwithstanding section 3901.71 of the Revised Code, 107  
an individual or group policy of sickness and accident insurance 108  
or a public employee benefit plan that is delivered, issued for 109  
delivery, or renewed in this state and covers opioid analgesic 110  
drug products as part of providing any coverage of prescription 111  
drugs shall provide access to abuse-deterrent opioid analgesic 112  
drug products in the drug formulary or other list of covered 113  
drugs that applies under the policy or plan. 114

(C) Both of the following apply to any prior authorization 115  
requirements or utilization review measures contained in a 116  
sickness and accident insurance policy or public employee 117  
benefit plan subject to this section and any coverage denials 118  
made pursuant to those requirements or measures with respect to 119  
opioid analgesic drug products: 120

(1) Prior authorization requirements or utilization review 121  
measures shall not be any more restrictive for abuse-deterrent 122  
opioid analgesic drug products than for opioid analgesic drug 123  
products that are not abuse-deterrent opioid analgesic drug 124  
products. 125

(2) Prior authorization requirements or utilization review 126  
measures shall not require treatment with an opioid analgesic 127  
drug product that is not an abuse-deterrent opioid analgesic 128  
drug product in order to access an abuse-deterrent opioid 129  
analgesic drug product. 130

(D) This section shall not be construed to prevent a 131  
sickness and accident insurer or public employee benefit plan 132  
from applying utilization review measures to abuse-deterrent 133

opioid analgesic drug products, including prior authorization 134  
requirements or nonopioid analgesic drug step therapy, provided 135  
that the same utilization review measures are applied to all 136  
opioid analgesic drug products. 137

(E) If a sickness and accident insurer or public employee 138  
benefit plan measures the efficiency, quality of care, or 139  
clinical performance of a prescriber, including through the use 140  
of patient satisfaction surveys, it shall not penalize the 141  
prescriber, financially or otherwise, for either of the 142  
following actions: 143

(1) Prescribing an abuse-deterrent opioid analgesic drug 144  
product; 145

(2) Deciding not to prescribe any opioid analgesic drug 146  
product. 147

**Sec. 5164.091.** (A) As used in this section: 148

(1) "Abuse-deterrent opioid analgesic drug product" means 149  
a brand or generic opioid analgesic drug product approved by the 150  
United States food and drug administration with abuse-deterrence 151  
labeling claims indicating its abuse-deterrent properties are 152  
expected to deter or reduce its abuse. 153

(2) "Opioid analgesic" has the same meaning as in section 154  
3719.01 of the Revised Code. 155

(3) "Prescriber" has the same meaning as in section 156  
4729.01 of the Revised Code. 157

(B) With respect to the medicaid program's coverage of 158  
prescribed drugs, the department of medicaid shall provide 159  
access to abuse-deterrent opioid analgesic drug products in the 160  
drug formulary or other list of covered drugs that applies under 161

the program. 162

(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: 163  
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(1) Prior authorization requirements or utilization review 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. 168  
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(2) Prior authorization requirements or utilization review 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. 172  
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(D) This section shall not be construed to prevent the department from applying utilization review measures to abuse-deterrent opioid analgesic drug products, including prior authorization requirements or nonopioid analgesic drug step therapy, provided that the same utilization review measures are applied to all opioid analgesic drug products. 177  
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(E) 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: 183  
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(1) Prescribing an abuse-deterrent opioid analgesic drug product; 188  
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(2) Deciding not to prescribe any opioid analgesic drug 190

<u>product.</u>	191
<b>Sec. 5167.12.</b> (A) When contracting under section 5167.10	192
of the Revised Code with a managed care organization that is a	193
health insuring corporation, the department of medicaid shall	194
require the health insuring corporation to provide coverage of	195
prescribed drugs for medicaid recipients enrolled in the health	196
insuring corporation. In providing the required coverage, the	197
health insuring corporation may <u>use strategies for the</u>	198
<u>management of drug utilization</u> , subject to the department's	199
approval <del>and</del> , <u>the limitations specified in division (B) of this</u>	200
<u>section, <del>use strategies for the management of drug utilization</del></u>	201
<u>and the requirements specified in division (C) of this section.</u>	202
(B) The department shall not permit a health insuring	203
corporation to impose a prior authorization requirement in the	204
case of a drug to which all of the following apply:	205
(1) The drug is an antidepressant or antipsychotic.	206
(2) The drug is administered or dispensed in a standard	207
tablet or capsule form, except that in the case of an	208
antipsychotic, the drug also may be administered or dispensed in	209
a long-acting injectable form.	210
(3) The drug is prescribed by either of the following:	211
(a) A physician whom the health insuring corporation,	212
pursuant to division (C) of section 5167.10 of the Revised Code,	213
has credentialed to provide care as a psychiatrist;	214
(b) A psychiatrist practicing at a community mental health	215
services provider certified by the department of mental health	216
and addiction services under section 5119.36 of the Revised	217
Code.	218

(4) The drug is prescribed for a use that is indicated on 219  
the drug's labeling, as approved by the federal food and drug 220  
administration. 221

(C) The department shall require a health insuring 222  
corporation to comply with the requirements of section 5164.091 223  
of the Revised Code as if the health insuring corporation were 224  
the department. 225

(D) The department shall ~~permit~~ authorize a health 226  
insuring corporation to develop and implement a pharmacy 227  
utilization management program under which prior authorization 228  
through the program is established as a condition of obtaining a 229  
controlled substance pursuant to a prescription. The 230  
department's authorization under this division does not affect a 231  
health insuring corporation's obligation to comply with the 232  
prior authorization procedures that apply as a result of 233  
division (C) of this section. 234

**Section 2.** That existing sections 1739.05 and 5167.12 of 235  
the Revised Code are hereby repealed. 236

**Section 3.** Sections 1739.05 and 1751.691 of the Revised 237  
Code, as amended or enacted by this act, apply only to 238  
arrangements, policies, contracts, and agreements that are 239  
created, delivered, issued for delivery, or renewed in this 240  
state on or after January 1, 2017. Section 3923.851 of the 241  
Revised Code, as enacted by this act, applies only to policies 242  
of sickness and accident insurance that are delivered, issued 243  
for delivery, or renewed in this state on or after January 1, 244  
2017, and only to public employee benefit plans that are 245  
established or modified in this state on or after January 1, 246  
2017. Sections 5164.091 and 5167.12 of the Revised Code, as 247  
amended or enacted by this act, apply to the Medicaid program 248

beginning January 1, 2017, and to contracts that the Department	249
of Medicaid and Medicaid managed care organizations enter into	250
or renew on or after January 1, 2017.	251