As Introduced

131st General Assembly

Regular Session **H. B. No. 250**

2015-2016

Representatives Sprague, Driehaus
Cosponsors: Representatives Antonio, Bishoff, Green, Johnson, T., Lepore-Hagan, Reineke, Rezabek, Smith, K.

A BILL

To amend sections 5164.01, 5167.12, and 5167.13 and to enact sections 5164.7511, 5167.121, and 5167.15 of the Revised Code regarding Medicaid pharmacy utilization management programs and prior authorization requirements for certain opioids.

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

Section 1. That sections 5164.01, 5167.12, and 5167.13 be amended and sections 5164.7511, 5167.121, and 5167.15 of the Revised Code be enacted to read as follows:

Sec. 5164.01. As used in this chapter:

(A) "Business day" means any day of the week that is not Saturday, Sunday, or a legal holiday, as defined in section 1.14 of the Revised Code.

(B) "Chronic pain" means pain that has persisted after reasonable medical efforts have been made to relieve the pain or cure its cause and has continued, either continuously or episodically, for longer than three continuous months. "Chronic

pain" does not include pain associated with cancer, a terminal condition, or with a progressive disease that, in the normal course of progression, may reasonably be expected to result in a terminal condition.

(C) "Controlled substance" has the same meaning as in section 3719.01 of the Revised Code.

(D) "Early and periodic screening, diagnostic, and treatment services" has the same meaning as in the "Social Security Act," section 1905(r), 42 U.S.C. 1396d(r).

~~(B)~~ (E) "Federal financial participation" has the same meaning as in section 5160.01 of the Revised Code.

~~(C)~~ (F) "Healthcheck" means the component of the medicaid program that provides early and periodic screening, diagnostic, and treatment services.

~~(D)~~ (G) "Home and community-based services medicaid waiver component" has the same meaning as in section 5166.01 of the Revised Code.

~~(E)~~ (H) "Hospital" has the same meaning as in section 3727.01 of the Revised Code.

~~(F)~~ (I) "ICDS participant" means a dual eligible individual who participates in the integrated care delivery system.

~~(G)~~ (J) "ICF/IID" has the same meaning as in section 5124.01 of the Revised Code.

~~(H)~~ (K) "Integrated care delivery system" and "ICDS" mean the demonstration project authorized by section 5164.91 of the Revised Code.

~~(I)~~ (L) "Mandatory services" means the health care services and items that must be covered by the medicaid state plan as a condition of the state receiving federal financial participation for the medicaid program.

~~(J)~~ (M) "Medicaid managed care organization" has the same meaning as in section 5167.01 of the Revised Code.

~~(K)~~ (N) "Medicaid provider" means a person or government entity with a valid provider agreement to provide medicaid services to medicaid recipients. To the extent appropriate in the context, "medicaid provider" includes a person or government entity applying for a provider agreement, a former medicaid provider, or both.

~~(L)~~ (O) "Medicaid services" means either or both of the following:

(1) Mandatory services;

(2) Optional services that the medicaid program covers.

~~(M)~~ (P) "Morphine equivalent dose" means the conversion of a dose of a controlled substance containing an opioid to the substance's equivalent dose of morphine using conversion tables developed by the state board of pharmacy.

(Q) "Nursing facility" has the same meaning as in section 5165.01 of the Revised Code.

~~(N)~~ (R) "Optional services" means the health care services and items that may be covered by the medicaid state plan or a federal medicaid waiver and for which the medicaid program receives federal financial participation.

~~(O)~~ (S) "Prescribed drug" has the same meaning as in 42 C.F.R. 440.120.

~~(P)~~ (T) "Provider agreement" means an agreement to which all of the following apply:

(1) It is between a medicaid provider and the department of medicaid;

(2) It provides for the medicaid provider to provide medicaid services to medicaid recipients;

(3) It complies with 42 C.F.R. 431.107(b).

~~(Q)~~ (U) "Terminal distributor of dangerous drugs" has the same meaning as in section 4729.01 of the Revised Code.

Sec. 5164.7511. (A) The medicaid program shall not cover a prescribed drug described in this division that is a controlled substance containing an opioid unless the medicaid provider who prescribes the drug first obtains prior authorization in accordance with a procedure adopted under division (C) of this section:

(1) The prescribed drug is not for treatment of chronic pain, a terminal condition, or a progressive disease that, in the normal course of progression, may reasonably be expected to result in a terminal condition and the amount to be dispensed exceeds the amount necessary for the recipient's use in a single ten-day period.

(2) The prescribed drug is for a medicaid recipient who has been diagnosed with chronic pain and both of the following are the case:

(a) The dose or doses to be taken by the recipient exceed a morphine equivalent dose of eighty milligrams a day.

(b) The recipient has received one or more other prescriptions for a controlled substance containing an opioid in

the past three consecutive months and the sum of the doses to be taken by the recipient under those prescriptions exceeds a morphine equivalent dose of eighty milligrams a day.

(3) The prescribed drug is for a medicaid recipient in conjunction with the recipient's treatment in an emergency department and all of the following are the case:

(a) The amount to be dispensed under the prescription exceeds the amount necessary for the recipient's use in a single seventy-two-hour period.

(b) The drug is not intended to treat pain associated with cancer, a terminal condition, or a progressive disease that, in the normal course of progression, may reasonably be expected to result in a terminal condition.

(c) The drug is not a drug described in division (B) of section 5167.12 of the Revised Code.

(B) The department of medicaid may contract with a person to perform the prior authorization determinations described in this section on the department's behalf. References in this section to performance of prior authorizaton by the department also apply to a person with which the department has contracted under this section.

(C) The department shall adopt one or more procedures that medicaid providers must use to obtain prior authorization for prescribed drugs described in division (A) of this section. If the state board of pharmacy establishes and maintains a database pursuant to section 4729.75 of the Revised Code, a procedure shall require the department, before approving or disapproving a prior authorization request, to consider whether the provider reviewed any information related to the recipient in the

database in accordance with standards and procedures established in rules adopted by the state board that regulates the provider's profession.

(D) The department shall disapprove a prior authorization request for a prescribed drug described in division (A) of this section if the department is aware that any of the following is true:

(1) The recipient has previously altered or forged a prescription or has engaged in other fraudulent activity for the purpose of obtaining controlled substances containing opioids.

(2) The recipient has misused prescription drugs in the past or has had an accidental overdose.

(3) The recipient has physically abused or verbally threatened the medicaid provider or the provider's or other medical staff.

(4) The recipient has had a urine or blood screening test that indicates that the recipient has used illicit substances or misused prescription drugs.

(E) All of the following apply to a prescribed drug described in division (A)(1) of this section:

(1) The department shall disapprove the prior authorization request if the drug is a long-acting or extended release form.

(2) The department shall approve or disapprove the prior authorization request not later than two business days after it is made and notify the provider of its determination in writing. If the request is disapproved, the department shall indicate, in detail, the reasons for disapproval.

(3) The department shall notify the provider that the provider should examine the recipient not more than four days before but not later than four days after the drug is prescribed.

(F) All of the following apply to a prescribed drug described in division (A)(2) of this section:

(1) The requirements of this section are in addition to requirements established under section 4731.052 of the Revised Code concerning physician treatment of chronic pain.

(2) The department shall strongly consider disapproving a prior authorization request if either of the following is true:

(a) The drug is to be administered intravenously or by subcutaneous injection, particularly if the drug is meperidine.

(b) The medicaid recipient has received a prescription for a sedative in the past twelve months, unless the recipient has taken other drugs or tried other therapies for the underlying condition and those have failed.

(c) The department shall approve or disapprove the prior authorization request as soon as practicable and notify the provider of its determination in writing. If the request is disapproved, the department shall indicate, in detail, the reasons for the disapproval.

(G) All of the following apply to a prescribed drug described in division (A)(3) of this section:

(1) The department shall disapprove the prior authorization request if the patient has told the medicaid provider that the patient is seeking the drug to replace a lost, destroyed, or stolen prescription or prescribed drug.

(2) When determining whether to approve or disapprove the prior authorization request, the department shall consider whether the recipient has been prescribed controlled substances for chronic pain, whether the patient has been previously treated in the emergency department for the same condition, and whether the patient has received a prescription for a controlled substance from another provider within the last thirty days.

(3) The department shall approve or disapprove the prior authorization request as soon as practicable after it is made and notify the provider of its determination in writing. If the request is disapproved, the department shall indicate, in detail, the reasons for disapproval.

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, subject to the department's approval and the limitations specified in division (B) of this section, use strategies for the management of drug utilization.

(B) ~~The~~ Except as provided in section 5167.121 of the Revised Code, 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 ~~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 section does not affect a health insuring corporation's obligation to comply with section 5167.121 of the Revised Code.

Sec. 5167.121. (A) As used in this section, "morphine equivalent dose" means the conversion of a dose of a controlled substance containing an opioid to the substance's equivalent dose of morphine using conversion tables developed by the state board of pharmacy.

(B) Each contract the department of medicaid enters into with a managed care organization under section 5167.10 of the Revised Code shall require the managed care organization to implement and administer a pharmacy utilization management

program to medicaid recipients who have high risk medication regimens. A recipient's medication regimen shall be considered high risk if the recipient has been prescribed at least one controlled substance containing an opioid and at least one benzodiazepine within a single twelve-month period.

In administering the program, the managed care organization shall employ or contract with appropriate professionals, including pharmacists, to review high risk medication regimens for clinical appropriateness. Any concerns about the clinical appropriateness of a recipient's medication regimen, which may include concerns about the volume of certain drugs prescribed or the morphine equivalent dose of controlled substances containing opioids prescribed, shall be discussed with the recipient's prescribers. When appropriate, staff shall suggest to the prescribers alternative medication regimens or therapies for the recipient.

Sec. 5167.13. Each contract the department of medicaid enters into with a managed care organization under section 5167.10 of the Revised Code shall require the managed care organization to implement a coordinated services program for medicaid recipients enrolled in the organization who are found to have obtained prescribed drugs under the medicaid program at a frequency or in an amount that is not medically necessary. The program shall be implemented in a manner that is consistent with the "Social Security Act," section 1915(a)(2), 42 U.S.C. 1396n(a)(2), and 42 C.F.R. 431.54(e). A coordinated services program described in this section may be a part of or separate from a pharmacy utilization management program implemented and administered under section 5167.121 of the Revised Code.

Sec. 5167.15. Each contract the department of medicaid

enters into with a managed care organization under section 5167.10 of the Revised Code shall require the managed care organization to comply with section 5164.7511 of the Revised Code as if the managed care organization was the department.

Section 2. That existing sections 5164.01, 5167.12, and 5167.13 of the Revised Code are hereby repealed.