

As Introduced

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

S. B. No. 357

Senator Hite

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 abuse-deterrent 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. 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 163
requirements or utilization review measures under the medicaid 164
program and any coverage denials made pursuant to those 165
requirements or measures with respect to opioid analgesic drug 166
products: 167

(1) Prior authorization requirements or utilization review 168
measures shall not be any more restrictive for abuse-deterrent 169
opioid analgesic drug products than for opioid analgesic drug 170
products that are not abuse-deterrent. 171

(2) Prior authorization requirements or utilization review 172
measures shall not require treatment with an opioid analgesic 173
drug product that is not an abuse-deterrent opioid analgesic 174
drug product in order to access an abuse-deterrent opioid 175
analgesic drug product. 176

(D) This section shall not be construed to prevent the 177
department from applying utilization review measures to abuse- 178
deterrent opioid analgesic drug products, including prior 179
authorization requirements or nonopioid analgesic drug step 180
therapy, provided that the same utilization review measures are 181
applied to all opioid analgesic drug products. 182

(E) If the department measures the efficiency, quality of 183
care, or clinical performance of a prescriber, including through 184
the use of patient satisfaction surveys, it shall not penalize 185
the prescriber, financially or otherwise, for either of the 186
following actions: 187

(1) Prescribing an abuse-deterrent opioid analgesic drug 188
product; 189

(2) Deciding not to prescribe any opioid analgesic drug 190

product. 191

Sec. 5167.12. (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 use strategies for the 198
management of drug utilization, subject to the department's 199
approval ~~and, the~~ limitations specified in division (B) of this 200
section, ~~use strategies for the management of drug utilization~~ 201
~~and the requirements specified in division (C) of this section.~~ 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