



Ohio Legislative Service Commission

Bill Analysis

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Sub. H.B. 248

131st General Assembly
(As Reported by H. Health and Aging)

Reps. Sprague and Antonio, Driehaus, Green, T. Johnson, Lepore-Hagan, Reineke, Rezabek, Rogers, K. Smith, Barnes, Schuring

BILL SUMMARY

- Requires certain health insurers and the Medicaid program to provide access to abuse-deterrent opioid analgesic drug products in their formularies or lists of covered drugs.
- Requires the insurers and Medicaid program to apply prior authorization requirements or utilization review measures as conditions of providing coverage of opioid analgesic drug products, except in specified circumstances.
- Provides that the prior authorization requirements or utilization review measures cannot be any more restrictive for opioid analgesic drug products that are abuse-deterrent than they are for products that are not abuse-deterrent.

CONTENT AND OPERATION

Access to abuse-deterrent opioid analgesics

The bill requires certain health insurers and the Medicaid program, including Medicaid managed care organizations, to provide access to abuse-deterrent opioid analgesic drug products in their drug formularies or lists of covered drugs.¹ The bill defines "opioid analgesic" as "a controlled substance that has analgesic pharmacologic activity at the opioid receptors of the central nervous system." It also defines "abuse-deterrent opioid analgesic drug product" as "a brand name or generic opioid analgesic drug product approved by the U.S. Food and Drug Administration with abuse-

¹ R.C. 1739.05, 1751.691, 3923.851, 5164.091, and 5167.12.

deterrence labeling claims indicating its abuse-deterrent properties are expected to deter or reduce its abuse."

Implementation of coverage

The bill applies to all of the following types of health insurers:

- (1) Health insuring corporations;
- (2) Sickness and accident insurers;
- (3) Multiple employer welfare arrangements;
- (4) Public employee benefit plans;

(5) The Medicaid program, including the Medicaid managed care organizations under contract with the Ohio Department of Medicaid to provide or arrange for the provision of health care services to Medicaid recipients.

In the case of these insurers, the bill governs policies, contracts, agreements, or plans issued, delivered, renewed, established, or modified in Ohio on or after January 1, 2017. Similarly, the bill applies to the Medicaid program and Medicaid managed care organizations on or after January 1, 2017.²

The bill does not apply to health insurance that is part of employee benefits offered by private employers that self-insure their benefit programs. These programs are generally precluded from state regulation by the federal Employee Retirement Income Security Act (ERISA) (see "**ERISA**," below).

Conditions on private insurers and public employee benefit plans

Under the bill, an insurance policy, contract, agreement, or plan must provide access to abuse-deterrent opioid analgesic drug products in the drug formulary or other list of covered drugs if the policy, contract, agreement, or plan covers opioid analgesic drug products as part of providing prescription drug coverage.

Mandatory prior authorization or utilization review

The bill requires that an insurer or the Medicaid program apply prior authorization requirements or utilization review measures as conditions of providing coverage of opioid analgesic drug products, including abuse-deterrent forms prescribed

² Section 3.

for the treatment of chronic pain, except when the drug product is prescribed or personally furnished by a prescriber under any of the following circumstances:

- (1) To a hospice patient in a hospice care program;
- (2) To any other patient diagnosed with a terminal condition;
- (3) To treat cancer or another condition associated with cancer.³

When implementing the required prior authorization or utilization review for opioid analgesic drug products, the insurer or Medicaid program must consider all of the following:⁴

(1) If the course of treatment with the drug continues for more than 90 days, the current law requirements regarding physician management of chronic pain;⁵

(2) If the morphine equivalent daily dose for the drug exceeds 80 milligrams, the current opioid prescribing guidelines established by the Governor's Cabinet Opiate Action Team (GCOAT);

(3) If the individual is being treated with a benzodiazepine at the same time the opioid analgesic drug product is prescribed, the current opioid prescribing guidelines established by GCOAT.

Abuse-deterrent formulations

The bill provides that any prior authorization requirements or utilization review measures for opioid analgesic drug products, and any coverage denials made pursuant to those requirements or measures, cannot do either of the following:

(1) Be any more restrictive for abuse-deterrent opioid analgesic drug products than for opioid analgesic drug products that are not abuse-deterrent;

(2) Require treatment with an opioid analgesic drug product that is not abuse-deterrent in order to access an abuse-deterrent formulation.⁶

³ R.C. 1739.05(B), 1751.691(E)(1), 3923.851(E)(1), and 5164.091(E)(1).

⁴ R.C. 1739.05, 1751.691(E)(2), 3923.851(E)(2), and 5164.091(E)(2).

⁵ R.C. 4731.052, not in the bill.

⁶ R.C. 1739.05(B), 1751.691(C), 3923.851(C), and 5164.091(C).



The bill also specifies that its provisions cannot be construed to prevent an insurer or the Medicaid program from applying utilization review requirements to abuse-deterrent opioid analgesic drug products, including prior authorization or nonopioid analgesic drug step therapy, as long as the same requirements are applied to all opioid analgesic drug products.⁷

Prescriber measures

Under the bill, if an insurer or the Medicaid program measures the efficiency, quality of care, or clinical performance of a prescriber, including through the use of patient satisfaction surveys, the prescriber cannot be penalized, financially or otherwise, for either of the following actions:

- (1) Prescribing an abuse-deterrent opioid analgesic drug product;
- (2) Deciding not to prescribe an opioid analgesic drug product.

Review of mandated benefits legislation

The bill exempts its requirements regarding access to abuse-deterrent opioid analgesic drugs by health insurers from an existing law that could prevent the requirements from being applied until a review by the Superintendent of Insurance has been conducted with respect to mandated health benefits.⁸ Under current law, legislation mandating health benefits cannot be applied to any health benefits arrangement after the legislation is enacted unless the Superintendent holds a public hearing and determines that it can be applied fully and equally in all respects to (1) employee benefits plans that are subject to ERISA and (2) employee benefit plans established or modified by the state or its political subdivisions.⁹ Under the bill, access to abuse-deterrent opioid analgesics is applicable and the Superintendent's hearing and determinations are not required even if the bill's provisions are considered mandated benefits.

ERISA

ERISA is a comprehensive federal statute governing the administration of employee benefit plans. ERISA generally precludes state regulation of benefits offered by private employers that self-insure their benefit programs. Larger employers frequently choose to establish their own health insurance plans for their employees in

⁷ R.C. 1739.05(B), 1751.691(D), 3923.851(D), and 5164.091(D).

⁸ R.C. 1739.05(B), 1751.691(B), and 3923.851(B).

⁹ R.C. 3901.71, not in the bill.

lieu of purchasing coverage from a sickness and accident insurer or health insuring corporation.

HISTORY

ACTION	DATE
Introduced	06-08-15
Reported, H. Health & Aging	05-05-16

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