



Ohio Legislative Service Commission

Bill Analysis

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S.B. 357

131st General Assembly
(As Introduced)

Sen. Hite

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

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

Types of health care coverage affected

Health insurers

The bill applies to all of the following types of health insurers as part of providing any coverage of prescription drugs:²

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

Medicaid

The bill also applies to the coverage of prescribed drugs under the Medicaid program. Regarding Medicaid managed care, the bill specifies that it applies to the health insuring corporations that are under contract with the Ohio Department of Medicaid to serve as Medicaid managed care organizations by providing or arranging for the provision of health care services to Medicaid recipients.³

ERISA

The amendment does not govern health care coverage 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). ERISA is a comprehensive federal statute governing the administration of employee benefit plans. Larger employers frequently choose to establish their own health insurance plans for their employees in lieu of purchasing coverage from a sickness and accident insurer or health insuring corporation.

Implementation date

In the case of health insurers, the bill governs policies, contracts, agreements, or plans issued, delivered, renewed, established, or modified in Ohio on or after January 1, 2017. For Medicaid in general, the bill applies beginning January 1, 2017; for Medicaid managed care organizations to contracts entered into on or after January 1, 2017.⁴ An

² R.C. 1739.05(B), 1751.691(B), and 3923.851(B).

³ R.C. 5164.09(B) and 5167.12.

⁴ Section 3.

amendment is necessary to adjust these dates to account for the time that has elapsed since the bill was introduced.

Conditions on prior authorization or utilization review

Under the bill, 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:⁵

(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.

The bill also specifies that its provisions cannot be construed to prevent a health insurer or the Medicaid program from applying utilization review measures to abuse-deterrent opioid analgesic drug products, including prior authorization or nonopioid analgesic drug step therapy, as long as the same utilization review measures are applied to all opioid analgesic drug products.⁶ The bill does not specify the meaning of "nonopioid analgesic drug step therapy."

Prescriber performance measurements

Under the bill, if health 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:⁷

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

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

Ohio mandated health benefits legislation

The bill's requirements regarding access to abuse-deterrent opioid analgesic drugs by health insurers are exempt from an Ohio law that otherwise could prevent them from being implemented until the requirements apply to ERISA-related health

⁵ R.C. 1739.05(B), 1751.691(C), 3923.851(C), and 5164.091(C).

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

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

care coverage.⁸ Under Ohio law, after legislation mandating health benefits has been enacted, the legislation cannot be applied to any health benefits arrangement until the Superintendent of Insurance 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 The bill, however, specifies that the Superintendent's hearing and determinations are not required even if its provisions are considered mandated benefits.

HISTORY

ACTION	DATE
Introduced	09-27-16

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

⁹ R.C. 3901.71, not in the bill.

