

As Passed by the Senate

133rd General Assembly

Regular Session

2019-2020

Am. S. B. No. 263

Senator Hackett

Cosponsors: Senators Maharath, Wilson, Craig, Thomas, Antonio, Kunze, Schuring, Blessing, Coley, Dolan, Fedor, Gavarone, Hoagland, Huffman, M., Huffman, S., Johnson, Lehner, Manning, McColley, O'Brien, Roegner, Rulli, Schaffer, Sykes, Yuko

A BILL

To amend sections 5164.751 and 5167.01 and to enact
sections 3902.50, 3902.51, 4729.49, and 5167.123
of the Revised Code to prohibit a pharmacy
benefit manager from taking certain actions with
respect to reimbursements made to health care
providers that participate in the federal 340B
Drug Pricing Program.

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

Section 1. That sections 5164.751 and 5167.01 be amended
and sections 3902.50, 3902.51, 4729.49, and 5167.123 of the
Revised Code be enacted to read as follows:

Sec. 3902.50. As used in this section and section 3902.51
of the Revised Code:

(A) "340B covered entity" and "third-party administrator"
have the same meanings as in section 5167.01 of the Revised
Code.

(B) "Health plan issuer" has the same meaning as in

section 3922.01 of the Revised Code. 17

(C) "Terminal distributor of dangerous drugs" has the same 18
meaning as in section 4729.01 of the Revised Code. 19

Sec. 3902.51. (A) On and after the effective date of this 20
section, a contract entered into between a health plan issuer, 21
including a third-party administrator, and a 340B covered entity 22
shall not contain any of the following provisions: 23

(1) A reimbursement rate for a prescription drug that is 24
less than the national average drug acquisition cost rate for 25
that drug as determined by the United States centers for 26
medicare and medicaid services, measured at the time the drug is 27
administered or dispensed, or, if no such rate is available at 28
that time, a reimbursement rate that is less than the wholesale 29
acquisition cost of the drug, as defined in 42 U.S.C. 1395w- 30
3a(c) (6) (B); 31

(2) A dispensing fee reimbursement amount that is less 32
than the reimbursement amount provided to a terminal distributor 33
of dangerous drugs under section 5164.753 of the Revised Code; 34

(3) A fee that is not imposed on a health care provider 35
that is not a 340B covered entity; 36

(4) A fee amount that exceeds the fee amount for a health 37
care provider that is not a 340B covered entity. 38

(B) No health plan issuer or third-party administrator 39
making payments pursuant to a health benefit plan shall 40
discriminate against a 340B covered entity in a manner that 41
prevents or interferes with an enrollee's choice to receive a 42
prescription drug from a 340B covered entity or its contracted 43
pharmacies. 44

(C) Any provision of a contract entered into between a 45
health plan issuer and a 340B covered entity that is contrary to 46
division (A) of this section is unenforceable and shall be 47
replaced with the dispensing fee or reimbursement rate that 48
applies for health care providers that are not 340B covered 49
entities. 50

Sec. 4729.49. (A) As used in this section, "340B covered 51
entity," "medicaid managed care organization," and "third-party 52
administrator" have the same meanings as in section 5167.01 of 53
the Revised Code. 54

(B) A contract between a terminal distributor of dangerous 55
drugs and a 340B covered entity shall require the terminal 56
distributor to comply with division (C) of this section. 57

(C) When paying a 340B covered entity for a dangerous drug 58
dispensed to a patient, a terminal distributor shall pay to the 59
340B covered entity the full reimbursement amount the terminal 60
distributor receives from the patient and the patient's health 61
insurer, including a third-party administrator or medicaid 62
managed care organization, except that the terminal distributor 63
may deduct from the full reimbursement amount a fee agreed on in 64
writing by the terminal distributor and the 340B covered entity. 65

Sec. 5164.751. (A) As used in this section, "state maximum 66
allowable cost" means the per unit amount the medicaid program 67
pays a terminal distributor of dangerous drugs for a prescribed 68
drug included in the state maximum allowable cost program 69
established under division (B) of this section. "State maximum 70
allowable cost" excludes dispensing fees and copayments, 71
coinsurance, or other cost-sharing charges, if any. 72

(B) ~~The~~ Subject to section 5167.123 of the Revised Code, 73

the medicaid director shall establish a state maximum allowable 74
cost program for purposes of managing medicaid payments to 75
terminal distributors of dangerous drugs for prescribed drugs 76
identified by the director pursuant to this division. The 77
director shall do all of the following with respect to the 78
program: 79

(1) Identify and create a list of prescribed drugs to be 80
included in the program. 81

(2) Update the list of prescribed drugs described in 82
division (B) (1) of this section on a weekly basis. 83

(3) Review the state maximum allowable cost for each 84
prescribed drug included on the list described in division (B) 85
(1) of this section on a weekly basis. 86

Sec. 5167.01. As used in this chapter: 87

(A) "340B covered entity" means an entity described in 88
section 340B(a) (4) of the "Public Health Service Act," 42 U.S.C. 89
256b(a) (4) and includes any pharmacy under contract with the 90
entity to dispense drugs on behalf of the entity. 91

(B) "Affiliated company" means an entity, including a 92
third-party payer or specialty pharmacy, with common ownership, 93
members of a board of directors, or managers, or that is a 94
parent company, subsidiary company, jointly held company, or 95
holding company with respect to the other entity. 96

~~(B)~~ (C) "Care management system" means the system 97
established under section 5167.03 of the Revised Code. 98

~~(C)~~ (D) "Controlled substance" has the same meaning as in 99
section 3719.01 of the Revised Code. 100

~~(D)~~ (E) "Dual eligible individual" has the same meaning as 101

in section 5160.01 of the Revised Code. 102

~~(E)~~ (F) "Emergency services" has the same meaning as in 103
the "Social Security Act," section 1932(b)(2), 42 U.S.C. 1396u- 104
2(b)(2). 105

~~(F)~~ (G) "Enrollee" means a medicaid recipient who 106
participates in the care management system and enrolls in a 107
medicaid MCO plan. 108

~~(G)~~ (H) "ICDS participant" has the same meaning as in 109
section 5164.01 of the Revised Code. 110

~~(H)~~ (I) "Medicaid managed care organization" means a 111
managed care organization under contract with the department of 112
medicaid pursuant to section 5167.10 of the Revised Code. 113

~~(I)~~ (J) "Medicaid MCO plan" means a plan that a medicaid 114
managed care organization, pursuant to its contract with the 115
department of medicaid under section 5167.10 of the Revised 116
Code, makes available to medicaid recipients participating in 117
the care management system. 118

~~(J)~~ (K) "Medicaid waiver component" has the same meaning 119
as in section 5166.01 of the Revised Code. 120

~~(K)~~ (L) "Network provider" has the same meaning as in 42 121
C.F.R. 438.2. 122

~~(L)~~ (M) "Nursing facility services" has the same meaning 123
as in section 5165.01 of the Revised Code. 124

~~(M)~~ (N) "Part B drug" means a drug or biological described 125
in section 1842(o)(1)(C) of the "Social Security Act," 42 U.S.C. 126
1395u(o)(1)(C). 127

~~(N)~~ (O) "Pharmacy benefit manager" has the same meaning as 128

in section 3959.01 of the Revised Code. 129

~~(O)~~ (P) "Practice of pharmacy" has the same meaning as in 130
section 4729.01 of the Revised Code. 131

~~(P)~~ (Q) "Prescribed drug" has the same meaning as in 132
section 5164.01 of the Revised Code. 133

~~(Q)~~ (R) "Prior authorization requirement" has the same 134
meaning as in section 5160.34 of the Revised Code. 135

~~(R)~~ (S) "Provider" means any person or government entity 136
that furnishes services to a medicaid recipient enrolled in a 137
medicaid MCO plan, regardless of whether the person or entity 138
has a provider agreement. 139

~~(S)~~ (T) "Provider agreement" has the same meaning as in 140
section 5164.01 of the Revised Code. 141

~~(T)~~ (U) "State pharmacy benefit manager" means the 142
pharmacy benefit manager selected by and under contract with the 143
medicaid director under section 5167.24 of the Revised Code. 144

~~(U)~~ (V) "Third-party administrator" means any person who 145
adjusts or settles claims on behalf of an insuring entity in 146
connection with life, dental, health, prescription drugs, or 147
disability insurance or self-insurance programs and includes a 148
pharmacy benefit manager. 149

Sec. 5167.123. (A) No contract between a medicaid managed 150
care organization, including a third-party administrator, and a 151
340B covered entity shall contain any of the following 152
provisions: 153

(1) A payment rate for a prescribed drug that is less than 154
the national average drug acquisition cost rate for that drug as 155
determined by the United States centers for medicare and 156

medicaid services, measured at the time the drug is administered 157
or dispensed, or, if no such rate is available at that time, a 158
reimbursement rate that is less than the wholesale acquisition 159
cost of the drug, as defined in 42 U.S.C. 1395w-3a(c)(6)(B); 160

(2) A fee that is not imposed on a health care provider 161
that is not a 340B covered entity; 162

(3) A fee amount that exceeds the amount for a health care 163
provider that is not a 340B covered entity. 164

(B) The organization, or its contracted third-party 165
administrators, shall not discriminate against a 340B covered 166
entity in a manner that prevents or interferes with a medicaid 167
recipient's choice to receive a prescription drug from a 340B 168
covered entity or its contracted pharmacies. 169

(C) Any provision of a contract entered into between the 170
organization and a 340B covered entity that is contrary to 171
division (A) of this section is unenforceable and shall be 172
replaced with the dispensing fee or payment rate that applies 173
for health care providers that are not 340B covered entities. 174

Section 2. That existing sections 5164.751 and 5167.01 of 175
the Revised Code are hereby repealed. 176