As Passed by the House

131st General Assembly

Regular Session **Sub. H. B. No. 116**

2015-2016

Representatives Brown, Ginter
Cosponsors: Representatives Becker, Kuhns, Kraus, Lepore-Hagan, Huffman, Barnes, Bishoff, Duffey, Ramos, Anielski, Antonio, Baker, Blessing, Boyce, Boyd, Buchy, Burkley, Celebrezze, Clyde, Conditt, Craig, Derickson, Dever, Dovilla, Driehaus, Fedor, Green, Hackett, Hall, Hambley, Hayes, Henne, Hill, Howse, Johnson, G., Kunze, Landis, Leland, Maag, Manning, McClain, O'Brien, M., Patterson, Pelanda, Reece, Rogers, Romanchuk, Ruhl, Ryan, Schaffer, Scherer, Schuring, Sears, Sheehy, Slaby, Slesnick, Smith, K., Smith, R., Sprague, Stinziano, Strahorn, Sweeney, Sykes, Terhar, Young, Speaker Rosenberger

A BILL

To amend sections 1739.05, 5164.01, 5164.753, 5164.757, 5167.01, and 5167.12 and to enact sections 1751.68, 3923.602, 4729.20, and 5164.7511 of the Revised Code regarding insurance and Medicaid coverage of medication synchronization.

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

Section 1. That sections 1739.05, 5164.01, 5164.753, 5164.757, 5167.01, and 5167.12 be amended and sections 1751.68, 3923.602, 4729.20, and 5164.7511 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.

(B) 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 shall comply with all laws applicable to self-funded programs in this state, including sections 3901.04, 3901.041, 3901.19 to 3901.26, 3901.38, 3901.381 to 3901.3814, 3901.40, 3901.45, 3901.46, 3902.01 to 3902.14, 3923.24, 3923.282, 3923.30, 3923.301, 3923.38, 3923.581, 3923.602, 3923.63, 3923.80, 3923.85, 3924.031, 3924.032, and 3924.27 of the Revised Code.

(C) A multiple employer welfare arrangement created pursuant to sections 1739.01 to 1739.22 of the Revised Code shall solicit enrollments only through agents or solicitors licensed pursuant to Chapter 3905. of the Revised Code to sell or solicit sickness and accident insurance.

(D) A multiple employer welfare arrangement created pursuant to sections 1739.01 to 1739.22 of the Revised Code shall provide benefits only to individuals who are members, employees of members, or the dependents of members or employees, or are eligible for continuation of coverage under section 1751.53 or 3923.38 of the Revised Code or under Title X of the "Consolidated Omnibus Budget Reconciliation Act of 1985," 100 Stat. 227, 29 U.S.C.A. 1161, as amended.

Sec. 1751.68. (A) As used in this section:

(1) "Cost-sharing" means the cost to an enrollee under an individual or group health insuring corporation policy, contract, or agreement according to any coverage limit, copayment, coinsurance, deductible, or other out-of-pocket expense requirements imposed by the policy, contract, or agreement.

(2) "Drug" has the same meaning as in section 4729.01 of the Revised Code.

(3) "Medication synchronization" means a pharmacy service that synchronizes the filling or refilling of prescriptions in a manner that allows the dispensed drugs to be obtained on the same date each month.

(4) "Prescriber" has the same meaning as in section 4729.01 of the Revised Code.

(5) "Prescription" means a written, electronic, or oral order issued by a prescriber for drugs or combinations or mixtures of drugs to be used by a particular individual.

(B) Notwithstanding section 3901.71 of the Revised Code, each health insuring corporation policy, contract, or agreement that provides prescription drug coverage shall provide for medication synchronization for an enrollee if all of the following conditions are met:

(1) The enrollee elects to participate in medication synchronization;

(2) The enrollee, the prescriber, and a pharmacist at a network pharmacy agree that medication synchronization is in the best interest of the enrollee;

(3) The prescription drug to be included in the medication synchronization meets the requirements of division (C) of this section.

(C) To be eligible for inclusion in medication synchronization for an enrollee, a drug must meet all of the following requirements:

(1) Be covered by the policy, contract, or agreement;

(2) Be prescribed for the treatment and management of a chronic disease or condition and be subject to refills;

(3) Satisfy all relevant prior authorization criteria;

(4) Not have quantity limits, dose optimization criteria, or other requirements that would be violated if synchronized;

(5) Not have special handling or sourcing needs, as determined by the policy, contract, or agreement, that require a single, designated pharmacy to fill or refill the prescription;

(6) Be formulated so that the quantity or amount dispensed can be effectively divided in order to achieve synchronization;

(7) Not be a schedule II controlled substance, opiate, or benzodiazepine, as those terms are defined in section 3719.01 of the Revised Code.

(D)(1) To provide for medication synchronization under division (B) of this section, a policy, contract, or agreement shall authorize coverage of a prescription drug subject to medication synchronization when the drug is dispensed in a quantity or amount that is less than a thirty-day supply.

(2) Except as provided in division (D)(3) of this section, the requirement of division (D)(1) of this section applies only

once for each prescription drug subject to medication synchronization for the same enrollee.

(3) Division (D)(2) of this section does not apply if any of the following occur:

(a) The prescriber changes the dosage or frequency of administration of a prescription drug subject to medication synchronization;

(b) The prescriber prescribes a different drug.

(E)(1) A policy, contract, or agreement that provides for medication synchronization under division (B) of this section shall permit and apply a prorated daily cost-sharing rate for a supply of a prescription drug subject to medication synchronization that is dispensed at a network pharmacy.

(2) Division (E)(1) of this section does not require a policy, contract, or agreement to waive any cost sharing in its entirety.

(F) A policy, contract, or agreement that provides for medication synchronization under division (B) of this section shall not use payment structures that incorporate dispensing fees that are determined by calculating the days' supply of drugs dispensed. Dispensing fees shall be determined exclusively on the total number of prescriptions that are filled or refilled.

(G) This section does not require a health insuring corporation to provide to a network pharmacy or a pharmacist at a network pharmacy any monetary or other financial incentive for the purpose of encouraging the pharmacy or a pharmacist to recommend medication synchronization to an enrollee.

Sec. 3923.602. (A) As used in this section:

(1) "Cost-sharing" means the cost to an insured under a policy of sickness and accident insurance or a public employee benefit plan according to any coverage limit, copayment, coinsurance, deductible, or other out-of-pocket expense requirements imposed by the policy or plan.

(2) "Drug" has the same meaning as in section 4729.01 of the Revised Code.

(3) "Medication synchronization" means a pharmacy service that synchronizes the filling or refilling of prescriptions in a manner that allows the dispensed drugs to be obtained on the same date each month.

(4) "Prescriber" has the same meaning as in section 4729.01 of the Revised Code.

(5) "Prescription" means a written, electronic, or oral order issued by a prescriber for drugs or combinations or mixtures of drugs to be used by a particular individual.

(B) Notwithstanding section 3901.71 of the Revised Code, each policy of sickness and accident insurance that provides prescription drug coverage and each public employee benefit plan that provides prescription drug coverage shall provide for medication synchronization for an insured if all of the following conditions are met:

(1) The insured elects to participate in medication synchronization;

(2) The insured, the prescriber, and a pharmacist at a network pharmacy agree that medication synchronization is in the best interest of the insured;

(3) The prescription drug to be included in the medication synchronization meets the requirements of division (C) of this section.

(C) To be eligible for inclusion in medication synchronization for an insured, a drug must meet all of the following requirements:

(1) Be covered by the policy or plan;

(2) Be prescribed for the treatment and management of a chronic disease or condition and be subject to refills;

(3) Satisfy all relevant prior authorization criteria;

(4) Not have quantity limits, dose optimization criteria, or other requirements that would be violated if synchronized;

(5) Not have special handling or sourcing needs, as determined by the policy or plan, that require a single, designated pharmacy to fill or refill the prescription;

(6) Be formulated so that the quantity or amount dispensed can be effectively divided in order to achieve synchronization;

(7) Not be a schedule II controlled substance, opiate, or benzodiazepine, as those terms are defined in section 3719.01 of the Revised Code.

(D)(1) To provide for medication synchronization under division (B) of this section, a policy or plan shall authorize coverage of a prescription drug subject to medication synchronization when the drug is dispensed in a quantity or amount that is less than a thirty-day supply.

(2) Except as provided in division (D)(3) of this section, the requirement of division (D)(1) of this section applies only

once for each prescription drug subject to medication synchronization for the same insured.

(3) Division (D)(2) of this section does not apply if any of the following occur:

(a) The prescriber changes the dosage or frequency of administration of a prescription drug subject to medication synchronization;

(b) The prescriber prescribes a different drug.

(E)(1) A policy or plan that provides for medication synchronization under division (B) of this section shall permit and apply a prorated daily cost-sharing rate for a supply of a prescription drug subject to medication synchronization that is dispensed at a network pharmacy.

(2) Division (E)(1) of this section does not require a policy or plan to waive any cost sharing in its entirety.

(F) A policy or plan that provides for medication synchronization under division (B) of this section shall not use payment structures that incorporate dispensing fees that are determined by calculating the days' supply of drugs dispensed. Dispensing fees shall be determined exclusively on the total number of prescriptions that are filled or refilled.

(G) This section does not require a sickness and accident insurer or public employee benefit plan to provide to a network pharmacy or a pharmacist at a network pharmacy any monetary or other financial incentive for the purpose of encouraging the pharmacy or pharmacist to recommend medication synchronization to an insured.

Sec. 4729.20. As used in this section, "medication

synchronization" means a pharmacy service that synchronizes the filling or refilling of prescriptions in a manner that allows the dispensed drugs to be obtained on the same date each month.

(B) A pharmacist may dispense a drug in a manner that varies from the prescription for the drug by dispensing a quantity or amount of the drug that is less than a thirty-day supply, if the pharmacist's action is taken solely for the purpose of medication synchronization pursuant to section 1751.68, 3923.602, 5164.7511, or 5167.12 of the Revised Code.

Sec. 5164.01. As used in this chapter:

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

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

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

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

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

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

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

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

(K) "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) "Medicaid services" means either or both of the following:

(1) Mandatory services;

(2) Optional services that the medicaid program covers.

(M) "Medication synchronization" means a pharmacy service that synchronizes the filling or refilling of prescriptions for drugs in a manner that allows the prescribed drugs to be obtained on the same date each month.

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

~~(N)~~ (O) "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)~~ (P) "Pharmacy provider" means a medicaid provider that is a pharmacy licensed as a terminal distributor of dangerous drugs.

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

~~(P)~~ (R) "Prescriber" has the same meaning as in section 4729.01 of the Revised Code.

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

Sec. 5164.753. In December of every even-numbered year, the medicaid director shall establish a dispensing fee, effective the following July, for terminal distributors of dangerous drugs that are providers of drugs under the medicaid program. In establishing the dispensing fee, the director shall take into consideration the results of the survey conducted under section 5164.752 of the Revised Code. The dispensing fee shall not be prorated on the basis of the days' supply of prescribed drugs dispensed.

Sec. 5164.757. ~~(A) As used in this section, "licensed~~

~~health professional authorized to prescribe drugs" has the same meaning as in section 4729.01 of the Revised Code.~~

~~(B)~~ The medicaid director may acquire or specify technologies to provide information regarding medicaid recipient eligibility, claims history, and drug coverage to medicaid providers through electronic health record and e-prescribing applications.

If such technologies are acquired or specified, the e-prescribing applications shall enable a medicaid provider who is a ~~licensed health professional authorized to prescribe drugs~~ prescriber to use an electronic system to prescribe a drug for a medicaid recipient. The purpose of the electronic system is to eliminate the need for such medicaid providers to issue prescriptions for medicaid recipients by handwriting or telephone. The technologies acquired or specified by the director also shall provide such medicaid providers with an up-to-date, clinically relevant drug information database and a system of electronically monitoring medicaid recipients' medical history, drug regimen compliance, and fraud and abuse.

Sec. 5164.7511. The medicaid program shall do all of the following regarding its coverage of prescribed drugs:

(A) Allow a pharmacy provider to engage in medication synchronization for a medicaid recipient for the treatment of a chronic disease or condition, other than a prescription for a drug that is a schedule II controlled substance, opiate, or benzodiazepine, as those terms are defined in section 3719.01 of the Revised Code, if the medicaid recipient, the prescriber, and a pharmacist of the pharmacy provider agree that medication synchronization is in the recipient's best interest;

(B) Prorate any cost-sharing charges instituted under section 5162.20 of the Revised Code that apply in the case of a prescribed drug, if less than a thirty-day supply of the drug is dispensed by a pharmacy provider to the recipient to achieve medication synchronization;

(C) Determine dispensing fees exclusively on the total number of prescriptions filled or refilled and not use payment structures incorporating dispensing fees determined by calculation of the days' supply of drugs dispensed.

Sec. 5167.01. As used in this chapter:

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

(B) "Dual eligible individual" has the same meaning as in section 5160.01 of the Revised Code.

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

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

(E) "Medicaid managed care organization" means a managed care organization under contract with the department of medicaid pursuant to section 5167.10 of the Revised Code.

(F) "Medicaid waiver component" has the same meaning as in section 5166.01 of the Revised Code.

(G) "Medication synchronization" means a pharmacy service that synchronizes the filling or refilling of prescriptions for drugs in a manner that allows the prescribed drugs to be

obtained on the same date each month.

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

~~(H)~~ (I) "Pharmacy provider" means a provider that is a pharmacy licensed as a terminal distributor of dangerous drugs.

(J) "Prescribed drug" has the same meaning as in section 5164.01 of the Revised Code.

~~(I)~~ (K) "Prescriber" has the same meaning as in section 4729.01 of the Revised Code.

(L) "Provider" means any person or government entity that furnishes services to a medicaid recipient enrolled in a medicaid managed care organization, regardless of whether the person or entity has a provider agreement.

~~(J)~~ (M) "Provider agreement" has the same meaning as in section 5164.01 of the Revised Code.

(N) "Schedule II" has the same meaning as in section 3719.01 of the Revised Code.

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

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~~ do all of the following:

(1) Include coverage of prescribed drugs ~~for~~ in the benefits package available to medicaid recipients enrolled in the health insuring corporation;

(2) Allow a pharmacy provider to engage in medication synchronization for a medicaid recipient for the treatment of a chronic disease or condition, other than a prescription for a drug that is a schedule II controlled substance, opiate, or benzodiazepine, as those terms are defined in section 3719.01 of the Revised Code, if the medicaid recipient, the prescriber, and a pharmacist of the pharmacy provider agree that medication synchronization is in the recipient's best interest;

(3) Prorate any cost-sharing charges instituted under the health insuring corporation's benefits package that apply in the case of a prescribed drug, if less than a thirty-day supply of the drug is dispensed by a pharmacy provider to the recipient to achieve medication synchronization;

(4) Determine dispensing fees exclusively on the total number of prescriptions filled or refilled and not use payment structures incorporating dispensing fees determined by calculation of the days' supply of drugs dispensed.

~~In~~ (B) In providing the required coverage of prescribed drugs pursuant to this section, ~~the~~ a health insuring corporation may, subject to the department's approval and the limitations specified in division ~~(B)~~ (C) of this section, use strategies for the management of drug utilization.

~~(B)~~ (C) 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)~~ (D) The department shall permit 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.

Section 2. That existing sections 1739.05, 5164.01, 5164.753, 5164.757, 5167.01, and 5167.12 of the Revised Code are hereby repealed.

Section 3. Sections 1739.05 and 1751.68 of the Revised Code, as amended or enacted by this act, apply only to arrangements, policies, contracts, and agreements that are created, delivered, issued for delivery, or renewed in this state on or after January 1, 2016. Section 3923.602 of the Revised Code, as enacted by this act, applies only to policies of sickness and accident insurance delivered, issued for delivery, or renewed in this state and public employee benefit plans that are established or modified in this state on or after

January 1, 2016. 434