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S.B. 263
133rd General Assembly

Final Analysis

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Version: As Passed by the General Assembly

Primary Sponsor: Sen. Hackett

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UPDATED VERSION*

SUMMARY

- Prohibits health plan issuers and Medicaid managed care organizations from including in a contract with a covered entity that participates in the federal 340B Drug Pricing Program certain provisions that would result in the entity not receiving the financial relief it is entitled to by virtue of its participation in the program.
- Requires terminal distributors of dangerous drugs to pay to a 340B covered entity the full amount received from the patient and the patient's health insurer, except for a fee agreed upon in writing between the terminal distributor and the entity.

DETAILED ANALYSIS

Reimbursements to 340B covered entities

Generally, the act prohibits private insurers and Medicaid managed care organizations (MCOs) from including certain provisions related to reimbursement and fees in contracts entered into with 340B covered entities. A 340B covered entity is an entity that under federal law is authorized to participate in the 340B Drug Pricing Program, and includes certain categories of hospitals and certain nonhospital providers that are eligible based on receiving federal funding

* This version reflects Revised Code number changes by the LSC Director under R.C. 101.131. (See https://www.legislature.ohio.gov/download?key=17238&format=pdf.)

and that generally provide care to the medically underserved. The 340B Drug Pricing Program requires drug manufacturers to sell outpatient drugs at a discount to those entities.[1]

Insurer and MCO contracts with 340B covered entities

The act prohibits health plan issuers[2] and MCOs, including third-party administrators of either, from including any of the following provisions in a contract with a 340B covered entity:[3]

1. A reimbursement or payment rate for a prescription drug that is less than the national average drug acquisition cost rate for the drug as determined by the U.S. Centers for Medicare and Medicaid Services (CMS) measured at the time the drug is administered or dispensed, or, if that rate is not available at that time, a reimbursement rate that is less than the wholesale acquisition cost of the drug as defined in federal law;
2. A fee that is not imposed on a health care provider that is not a 340B covered entity;
3. A fee that exceeds a fee imposed on a health care provider that is not a 340B covered entity.

For purposes of these provisions, "third party administrator" has the same definition as under continuing law and means any person who adjusts or settles claims on behalf of an insuring entity in connection with life, dental, health, prescription drugs, or disability insurance or self-insurance programs, and includes a pharmacy benefit manager.[4]

Additionally, the act prohibits a health plan issuer from including in the contract a provision that establishes a dispensing fee reimbursement that is less than the dispensing fee for terminal distributors of dangerous drugs the Medicaid Director establishes for the Medicaid program under continuing law.[5]

Both health plan issuers and MCOs are prohibited by the act from discriminating against 340B covered entities in a manner that prevents or interferes with an enrollee or recipient's choice to receive a prescription drug from a 340B covered entity or its contracted pharmacies.[6]

The act's provisions that are applicable to health plan issuers apply to contracts entered into on and after the act's effective date.[7] For both health plan issuers and MCOs, the act specifies that any contract provision entered into that is contrary to the prohibitions discussed above is

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[1] Health Resources and Services Administration, U.S. Department of Health and Human Services, *340B Drug Pricing Program*, https://www.hrsa.gov/opa/index.html.

[2] R.C. 3922.01, not in the act.

[3] R.C. 3902.71(A) and 5167.123(A).

[4] R.C. 3902.70(A), 4729.49(A), and 5167.01(V).

[5] R.C. 3902.71(A)(2), referencing R.C. 5164.753, not in the act.

[6] R.C. 3902.71(B) and 5167.123(B).

[7] R.C. 3902.71(A).

unenforceable and must be replaced with a dispensing fee or reimbursement rate that applies to health care providers that are not 340B covered entities.[8]

Terminal distributor contracts with 340B covered entities

The act requires contracts between a terminal distributor of dangerous drugs and a 340B covered entity to provide that, when paying a 340B covered entity for dispensing a dangerous drug to a patient, the terminal distributor must pay the full amount the terminal distributor receives from the patient and the patient's health insurer, (including a third-party administrator or MCO) except that the terminal distributor may deduct a fee agreed on in writing between the terminal distributor and the 340B covered entity.[9] A terminal distributor of dangerous drugs is a person engaged in the sale of dangerous drugs at retail, or a person, other than a wholesale distributor or a pharmacist, who has possession, custody, or control of dangerous drugs for any purpose other than for that person's own use and consumption.[10] Sites licensed as terminal distributors include pharmacies, hospitals, nursing homes, emergency medical service organizations, and laboratories.

Medicaid state maximum allowable cost

The act specifies that, regarding the state maximum allowable cost program the Medicaid Director must establish under continuing law to manage Medicaid payments to terminal distributors for certain identified drugs, the establishment of the program is subject to the act's prohibitions on MCOs.[11]

HISTORY

Action	Date
Introduced	01-27-20
Reported, S. Finance	12-02-20
Passed Senate (33-0)	12-02-20
Reported, H. Health	12-14-20
Passed House (77-6)	12-17-20

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[8] R.C. 3902.71(C) and 5167.123(C).

[9] R.C. 4729.49(B) and (C).

[10] R.C. 4729.01(Q), not in the act.

[11] R.C. 5164.751(B).