

**As Reported by the House Health Committee**

**133rd General Assembly**

**Regular Session**

**2019-2020**

**Sub. H. B. No. 482**

**Representatives Clites, Manchester**

**Cosponsors: Representatives Miranda, Patterson, Weinstein, Koehler, West,  
Crossman, Liston, Scherer, Edwards, Boyd, Carfagna, Galonski, Sweeney,  
Ingram, Lightbody, Miller, J., Russo**

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**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 or, if no such rate is available, 27  
a reimbursement rate that is less than the wholesale acquisition 28  
cost of the drug as defined in 42 U.S.C. 1395w-3a(c) (6) (B), 29  
measured at the time the drug is administered or dispensed; 30

(2) A dispensing fee reimbursement amount that is less 31  
than the reimbursement amount provided to a terminal distributor 32  
of dangerous drugs under section 5164.753 of the Revised Code; 33

(3) A fee that is not imposed on a health care provider 34  
that is not a 340B covered entity; 35

(4) A fee amount that exceeds the fee amount for a health 36  
care provider that is not a 340B covered entity. 37

(B) No health plan issuer or third-party administrator 38  
making payments pursuant to a health benefit plan shall 39  
discriminate against a 340B covered entity in a manner that 40  
prevents or interferes with an enrollee's choice to receive a 41  
prescription drug from a 340B covered entity or its contracted 42  
pharmacies. 43

(C) Any provision of a contract entered into between a 44

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

**Sec. 4729.49.** (A) As used in this section, "340B covered 50  
entity," "medicaid managed care organization," and "third-party 51  
administrator" have the same meanings as in section 5167.01 of 52  
the Revised Code. 53

(B) A contract between a terminal distributor of dangerous 54  
drugs and a 340B covered entity shall require the terminal 55  
distributor to comply with division (C) of this section. 56

(C) When paying a 340B covered entity for a dangerous drug 57  
dispensed to a patient, a terminal distributor shall pay to the 58  
340B covered entity the full reimbursement amount the terminal 59  
distributor receives from the patient and the patient's health 60  
insurer, including a third-party administrator or medicaid 61  
managed care organization, except that the terminal distributor 62  
may deduct from the full reimbursement not more than a fee 63  
agreed upon in writing between the terminal distributor and the 64  
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
<del>(E)</del> <u>(F)</u> "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
<del>(F)</del> <u>(G)</u> "Enrollee" means a medicaid recipient who	106
participates in the care management system and enrolls in a	107
medicaid MCO plan.	108
<del>(G)</del> <u>(H)</u> "ICDS participant" has the same meaning as in	109
section 5164.01 of the Revised Code.	110
<del>(H)</del> <u>(I)</u> "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
<del>(I)</del> <u>(J)</u> "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
<del>(J)</del> <u>(K)</u> "Medicaid waiver component" has the same meaning	119
as in section 5166.01 of the Revised Code.	120
<del>(K)</del> <u>(L)</u> "Network provider" has the same meaning as in 42	121
C.F.R. 438.2.	122
<del>(L)</del> <u>(M)</u> "Nursing facility services" has the same meaning	123
as in section 5165.01 of the Revised Code.	124
<del>(M)</del> <u>(N)</u> "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
<del>(N)</del> <u>(O)</u> "Pharmacy benefit manager" has the same meaning as	128

in section 3959.01 of the Revised Code.	129
<del>(O)</del> <u>(P)</u> "Practice of pharmacy" has the same meaning as in section 4729.01 of the Revised Code.	130 131
<del>(P)</del> <u>(Q)</u> "Prescribed drug" has the same meaning as in section 5164.01 of the Revised Code.	132 133
<del>(Q)</del> <u>(R)</u> "Prior authorization requirement" has the same meaning as in section 5160.34 of the Revised Code.	134 135
<del>(R)</del> <u>(S)</u> "Provider" means any person or government entity that furnishes services to a medicaid recipient enrolled in a medicaid MCO plan, regardless of whether the person or entity has a provider agreement.	136 137 138 139
<del>(S)</del> <u>(T)</u> "Provider agreement" has the same meaning as in section 5164.01 of the Revised Code.	140 141
<del>(T)</del> <u>(U)</u> "State pharmacy benefit manager" means the pharmacy benefit manager selected by and under contract with the medicaid director under section 5167.24 of the Revised Code.	142 143 144
<del>(U)</del> <u>(V)</u> "Third-party administrator" 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.	145 146 147 148 149
<b><u>Sec. 5167.123.</u></b> <u>(A) No contract between a medicaid managed care organization, including a third-party administrator, and a 340B covered entity shall contain any of the following provisions:</u>	150 151 152 153
<u>(1) A payment rate for a prescribed drug that is less than the national average drug acquisition cost rate for that drug as determined by the United States centers for medicare and</u>	154 155 156

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