

**As Introduced**

**124th General Assembly  
Regular Session  
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**S. B. No. 127**

**SENATORS Hagan, Ryan, Brady, DiDonato, Fingerhut, Furney, Herington,  
Mallory, McLin, Prentiss, Shoemaker**

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**A B I L L**

To amend section 329.04 and to enact sections 5110.01, 1  
5110.02, 5110.03, 5110.04, 5110.06, 5110.07, 2  
5110.08, 5110.09, 5110.10, 5110.12, 5110.15, 3  
5110.16, 5110.18, 5110.19, 5110.20, 5110.21, 4  
5110.25, 5110.26, 5110.27, 5110.28, 5110.40, 5  
5110.42, 5110.44, 5110.50, 5110.60, and 5110.62 of 6  
the Revised Code to create the Rx Program; to 7  
require the Director of Job and Family Services, on 8  
making a specified determination, to establish 9  
maximum retail prices for prescription drugs; to 10  
authorize the Director to act in the event of a 11  
severe shortage of prescription drugs; and to 12  
authorize a civil action for violation of certain 13  
prohibitions regarding pricing of prescription 14  
drugs. 15

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

**Section 1.** That section 329.04 be amended and sections 16  
5110.01, 5110.02, 5110.03, 5110.04, 5110.06, 5110.07, 5110.08, 17  
5110.09, 5110.10, 5110.12, 5110.15, 5110.16, 5110.18, 5110.19, 18  
5110.20, 5110.21, 5110.25, 5110.26, 5110.27, 5110.28, 5110.40, 19  
5110.42, 5110.44, 5110.50, 5110.60, and 5110.62 of the Revised 20

Code be enacted to read as follows: 21

**Sec. 329.04.** (A) The county department of job and family 22  
services shall have, exercise, and perform the following powers 23  
and duties: 24

(1) Perform any duties assigned by the state department of 25  
job and family services regarding the provision of public family 26  
services, including the provision of the following services to 27  
prevent or reduce economic or personal dependency and to 28  
strengthen family life: 29

(a) Services authorized by Title IV-A of the "Social Security 30  
Act," ~~49~~ 110 Stat. ~~620 (1935)~~ 2113 (1996), 42 U.S.C.A. 301, as 31  
amended, and known in this state as the Ohio works first program 32  
established by Chapter 5107. of the Revised Code and the 33  
prevention, retention, and contingency program established under 34  
Chapter 5108. of the Revised Code; 35

(b) Social services authorized by Title XX of the "Social 36  
Security Act" and provided for by section 5101.46 of the Revised 37  
Code; 38

(c) If the county department is designated as the child 39  
support enforcement agency, services authorized by Title IV-D of 40  
the "Social Security Act" and provided for by Chapter 3125. of the 41  
Revised Code. The county department may perform the services 42  
itself or contract with other government entities, and, pursuant 43  
to division (C) of section 2301.35 and section 2301.42 of the 44  
Revised Code, private entities, to perform the Title IV-D 45  
services. 46

(2) Administer disability assistance under Chapter 5115. of 47  
the Revised Code as required by the state department of job and 48  
family services; 49

(3) Administer burials insofar as the administration of 50

burials was, prior to September 12, 1947, imposed upon the board  
of county commissioners and if otherwise required by state law;

(4) Cooperate with state and federal authorities in any  
matter relating to family services and to act as the agent of such  
authorities;

(5) Submit an annual account of its work and expenses to the  
board of county commissioners and to the state department of job  
and family services at the close of each fiscal year;

(6) Exercise any powers and duties relating to family  
services or workforce development activities imposed upon the  
county department of job and family services by law, by resolution  
of the board of county commissioners, or by order of the governor,  
when authorized by law, to meet emergencies during war or peace;

(7) Determine the eligibility for medical assistance of  
recipients of aid under Title XVI of the "Social Security Act";

(8) If assigned by the state director of job and family  
services under section 5101.515 of the Revised Code, determine  
applicants' eligibility for health assistance under the children's  
health insurance program part II;

(9) Enter into a plan of cooperation with the board of county  
commissioners under section 307.983, consult with the board in the  
development of the transportation work plan developed under  
section 307.985, establish with the board procedures under section  
307.986 for providing services to children whose families relocate  
frequently, and comply with the contracts the board enters into  
under sections 307.981 and 307.982 of the Revised Code that affect  
the county department;

(10) For the purpose of complying with a partnership  
agreement the board of county commissioners enters into under  
section 307.98 of the Revised Code, exercise the powers and  
perform the duties the partnership agreement assigns to the county

department; 82

(11) If the county department is designated as the workforce 83  
development agency, provide the workforce development activities 84  
specified in the contract required by section 330.05 of the 85  
Revised Code; 86

(12) Accept applications for the Rx program created by 87  
section 5110.02 of the Revised Code and make eligibility 88  
determinations for the program. 89

(B) The powers and duties of a county department of job and 90  
family services are, and shall be exercised and performed, under 91  
the control and direction of the board of county commissioners. 92  
The board may assign to the county department any power or duty of 93  
the board regarding family services and workforce development 94  
activities. If the new power or duty necessitates the state 95  
department of job and family services changing its federal cost 96  
allocation plan, the county department may not implement the power 97  
or duty unless the United States department of health and human 98  
services approves the changes. 99

**Sec. 5110.01. As used in this chapter:** 100

(A) "Manufacturer of dangerous drugs," "terminal distributor 101  
of dangerous drugs," and "wholesale distributor of dangerous 102  
drugs" have the same meanings as in section 4729.01 of the Revised 103  
Code. 104

(B) "Medicaid" has the same meaning as in section 5111.01 of 105  
the Revised Code. 106

(C) "Prescription drug" means a dangerous drug as defined in 107  
division (F)(1) of section 4729.01 of the Revised Code. 108

(D) "Rx program participant" means an individual determined 109  
eligible for the Rx program and issued an Rx program enrollment 110  
card. 111

(E) "State health program" means a health program that is 112  
funded in whole or part with state funds or administered by a 113  
state agency. 114

Sec. 5110.02. There is hereby established in the department 115  
of job and family services the Rx program. An Rx program 116  
participant shall receive an Rx program enrollment card to be 117  
presented to terminal distributors of dangerous drugs to receive 118  
discounts provided for under section 5110.15 of the Revised Code 119  
on prescription drugs covered by the program pursuant to section 120  
5110.27 of the Revised Code. 121

Sec. 5110.03. The director of job and family services may 122  
coordinate the Rx program with other programs administered by the 123  
director or, pursuant to an interagency agreement, directors of 124  
other state departments, to enhance efficiency, reduce the cost of 125  
prescription drugs, and maximize the benefits of the Rx program 126  
and other programs. Coordination may include making participants 127  
of other programs eligible for the Rx program. 128

Sec. 5110.04. There is hereby created in the state treasury 130  
the Rx program fund. The fund shall consist of rebates made by 131  
manufacturers of dangerous drugs and wholesale distributors of 132  
dangerous drugs pursuant to rebate agreements entered into under 133  
section 5110.25 of the Revised Code and money the general assembly 134  
appropriates for the Rx program. The director of job and family 135  
services shall use money in the fund to reimburse a terminal 136  
distributor of dangerous drugs the amount of the discount the 137  
terminal distributor provides an Rx program participant on a 138  
prescription drug pursuant to section 5110.15 of the Revised Code 139  
and pay the terminal distributor a professional fee established by 140  
rules adopted under section 5110.06 of the Revised Code. The 141  
director shall also use money in the fund to pay the 142

administrative costs of the Rx program, including administrative 143  
costs associated with contracted services, computers, and other 144  
reasonable administrative matters. Investment earnings of the fund 145  
shall be credited to the fund. 146

Sec. 5110.06. The director of job and family services shall 147  
adopt rules in accordance with Chapter 119. of the Revised Code to 148  
implement the Rx program. The rules shall provide for all of the 149  
following: 150

(A) Simplified eligibility determination procedures for the 151  
Rx program; 152

(B) The manner in which a terminal distributor of dangerous 153  
drugs shall disclose to an Rx program participant the amount the 154  
program has saved the participant on the cost of a prescription 155  
drug covered by the Rx program that the participant purchases from 156  
the terminal distributor. The rules shall not require a terminal 157  
distributor of dangerous drugs to reveal any proprietary 158  
information. 159

(C) Claim forms to be used by a terminal distributor of 160  
dangerous drugs under section 5110.18 of the Revised Code; 161

(D) The amount of the professional fee to be paid to terminal 162  
distributors of dangerous drugs pursuant to section 5110.19 of the 163  
Revised Code. The professional fee shall be three dollars 164  
initially. The director shall review the professional-fee amount 165  
periodically to determine whether it should be increased. 166

(E) A schedule for manufacturers of dangerous drugs and 167  
wholesale distributors of dangerous drugs to pay rebates to the 168  
director pursuant to a rebate agreement entered into under section 169  
5110.25 of the Revised Code; 170

(F) Notwithstanding this chapter, adjustments to the 171

requirements and terms of the Rx program to accommodate any 172  
federally funded prescription drug programs created after the 173  
effective date of this section. 174

Sec. 5110.07. The director of job and family services shall 175  
seek a waiver of federal law or regulation if necessary to 176  
implement the Rx program. 177

Sec. 5110.08. The director of job and family services shall 178  
report enrollment in and the financial status of the Rx program to 179  
the speaker and minority leader of the house of representatives 180  
and the president and minority leader of the senate not later than 181  
the second week of each January. 182

Sec. 5110.09. The director of job and family services shall 183  
undertake outreach efforts to publicize the Rx program and 184  
maximize enrollment in the program. 185

Sec. 5110.10. An individual who meets all of the following 186  
requirements is eligible to participate in the Rx program. 187

(A) The individual is a resident of this state. 188

(B) Except as provided in section 5110.03 of the Revised 189  
Code, the individual is not eligible for a program under which 190  
federal, state, or county funds are used to pay part or all of the 191  
cost of the individual's prescription drugs. 192

(C) The individual does not have prescription drug coverage 193  
through a third-party payer, as defined in section 3901.38 of the 194  
Revised Code. 195

Sec. 5110.12. An individual seeking to participate in the Rx 196  
program shall apply to the county department of job and family 197  
services of the county in which the individual resides. 198

Sec. 5110.15. Each terminal distributor of dangerous drugs shall discount the amount it charges an Rx program participant for a prescription drug covered by the program. The amount of the discount shall be the amount of the rebate a manufacturer of dangerous drugs or wholesale distributor of dangerous drugs pays the director of job and family services for the prescription drug pursuant to a rebate agreement entered into under section 5110.25 of the Revised Code.

Sec. 5110.16. In accordance with rules adopted under section 5110.06 of the Revised Code, a terminal distributor of dangerous drugs shall disclose to an Rx program participant the amount the program has saved the participant on the cost of a prescription drug covered by the program that the participant purchases from the terminal distributor.

Sec. 5110.18. A terminal distributor of dangerous drugs that provides an Rx program participant a discount on a prescription drug pursuant to section 5110.15 of the Revised Code shall submit a claim to the director of job and family services verifying the amount the terminal distributor charged the participant for the prescription drug. The terminal distributor shall use a claim form prescribed in rules adopted under section 5110.06 of the Revised Code.

Sec. 5110.19. Using claims submitted by a terminal distributor of dangerous drugs under section 5110.18 of the Revised Code, the director of job and family services shall reimburse a terminal distributor of dangerous drugs the amount of the discount the terminal distributor provides an Rx program participant on a prescription drug pursuant to section 5110.15 of the Revised Code and pay the terminal distributor the professional

fee established by rules adopted under section 5110.06 of the 228  
Revised Code for each claim. The director shall make the 229  
reimbursements and payments on a weekly or biweekly basis. 230

Sec. 5110.20. The director of job and family services shall 231  
not impose a transaction charge on a terminal distributor of 232  
dangerous drugs that submits a claim under section 5110.18 of the 233  
Revised Code. 234

Sec. 5110.21. The director of job and family services shall 235  
not release any information included on a claim submitted to the 236  
director under section 5110.18 of the Revised Code that is subject 237  
to confidentiality protection under federal or state law. 238

Sec. 5110.25. Each manufacturer of dangerous drugs and 239  
wholesale distributor of dangerous drugs that sells prescription 240  
drugs through a state health program shall enter into a rebate 241  
agreement with the director of job and family services under which 242  
the manufacturer or wholesale distributor is to make rebate 243  
payments to the director on a quarterly basis or in accordance 244  
with a schedule established by rules adopted under section 5110.06 245  
of the Revised Code. 246

Sec. 5110.26. The director of job and family services shall 247  
negotiate with each manufacturer of dangerous drugs and wholesale 248  
distributor of dangerous drugs that enters into a rebate agreement 249  
with the director under section 5110.25 of the Revised Code the 250  
amount of the rebate the manufacturer or wholesale distributor 251  
shall pay to the director under that section. In the process of 252  
negotiations, the director shall do both of the following: 253

(A) Take into consideration rebates provided for under 42 254  
U.S.C.A. 1396r-8, the average wholesale price of prescription 255

drugs, and any other information on prescription drug prices and price discounts available to the director; 256  
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(B) Use the director's best efforts to obtain a rebate amount that is at least as much as the amount of the rebate provided for under 42 U.S.C.A. 1396r-8 or not less than the amount the federal government receives as a discount, rebate, or price reduction for prescription drugs. 258  
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Sec. 5110.27. The Rx program shall cover a prescription drug if the prescription drug is included in a rebate agreement entered into under section 5110.25 of the Revised Code. 263  
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Sec. 5110.28. The director of job and family services shall maintain a list of manufacturers of dangerous drugs and wholesale distributors of dangerous drugs that do not enter into a rebate agreement with the director under section 5110.25 of the Revised Code. The director shall make the list available to the public. 266  
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Sec. 5110.40. Not later than April 1, 2005, the director of job and family services shall do all of the following: 271  
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(A) Review medicaid recipients' use of prescription drugs and create a list of the one hundred prescription drugs most used by medicaid recipients and the one hundred prescription drugs for which the total cost was the highest. To make this determination, the director shall use data from the most recent six-month period for which such data is available. 273  
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(B) Determine the average amount terminal distributors of dangerous drugs charged Rx program participants for each prescription drug included on the list created under division (A) of this section on a date selected by the director; 279  
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(C) Determine the average amount terminal distributors of dangerous drugs charged persons other than Rx program participants 283  
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for each prescription drug included on the list created under 285  
division (A) of this section on the date selected by the director 286  
under division (B) of this section. 287

Sec. 5110.42. If the director of job and family services 288  
determines under section 5110.40 of the Revised Code that the 289  
average amount terminal distributors of dangerous drugs charged Rx 290  
program participants for one or more prescription drugs included 291  
on the list the director created under division (A) of that 292  
section is not reasonably comparable to the average amount 293  
terminal distributors charged persons other than Rx program 294  
participants for the same prescription drug, the director shall 295  
adopt rules in accordance with Chapter 119. of the Revised Code 296  
establishing maximum amounts terminal distributors of dangerous 297  
drugs may charge in this state for any or all prescription drugs. 298  
If required to adopt the rules, the director shall adopt the rules 299  
not later than October 1, 2005. The rules shall permit a terminal 300  
distributor of dangerous drugs to appeal the maximum price a rule 301  
establishes for a prescription drug in accordance with Chapter 302  
119. of the Revised Code. 303

Sec. 5110.44. (A) No terminal distributor of dangerous drugs 304  
shall charge more for a prescription drug than permitted by rules 305  
adopted under section 5110.42 of the Revised Code. 306

(B) A terminal distributor of dangerous drugs that violates 307  
division (A) of this section commits an unfair or deceptive act or 308  
practice in violation of section 1345.02 of the Revised Code. 309

Sec. 5110.50. If the director of job and family services 310  
determines that there is a severe shortage of prescription drugs 311  
in this state that could threaten the public health or welfare, 312  
the director may take actions the director determines necessary. 313

Sec. 5110.60. (A) No manufacturer of dangerous drugs, wholesale distributor of dangerous drugs, or terminal distributor of dangerous drugs shall do any of the following:

(1) Demand an unconscionable price for a prescription drug;

(2) Demand prices or terms for a prescription drug that leads to an unjust or unreasonable profit;

(3) Discriminate unreasonably against any person in the sale, exchange, distribution, or handling of a prescription drug dispensed or delivered in this state.

(B) A manufacturer of dangerous drugs, wholesale distributor of dangerous drugs, or terminal distributor of dangerous drugs that violates this section is liable in a civil action for all of the following:

(1) An amount equal to three times the amount of the injury caused by the violation;

(2) An amount not to exceed one hundred thousand dollars;

(3) The cost of bringing and prosecuting the action, including necessary and reasonable investigative costs, reasonable expert fees, and reasonable attorney's fees;

(4) In the case of a willful violation or a determination that the manufacturer of dangerous drugs, wholesale distributor of dangerous drugs, or terminal distributor of dangerous drugs previously has been found liable under this section, punitive damages.

Sec. 5110.62. On behalf of a person, group of persons, state agency, or political subdivision injured by a violation of section 5110.60 of the Revised Code, the attorney general may bring a civil action against the manufacturer of dangerous drugs, wholesale distributor of dangerous drugs, or terminal distributor

of dangerous drugs whose violation of that section caused the 343  
injury. There is a right to a jury trial in a civil action brought 344  
under this section. In addition to the awards provided by division 345  
(B) of section 5110.60 of the Revised Code, the attorney general 346  
may obtain injunctive relief. If punitive damages are awarded, the 347  
attorney general shall equitably distribute the damages to all 348  
injured parties, less reasonable costs to the attorney general for 349  
distributing the damages. 350

**Section 2.** That existing section 329.04 of the Revised Code 351  
is hereby repealed. 352

**Section 3.** Sections 1 and 2 of this act shall take effect 353  
January 1, 2002. 354