

As Introduced

**126th General Assembly
Regular Session
2005-2006**

S. B. No. 251

Senators Spada, Hagan

—

A BILL

To amend sections 127.16, 2921.13, 5110.01, 5110.02, 1
5110.03, 5110.05, 5110.08, 5110.09, 5110.12, 2
5110.13, 5110.14, 5110.15, 5110.16, 5110.17, 3
5110.18, 5110.19, 5110.21, 5110.23, 5110.26, 4
5110.27, 5110.29, 5110.32, 5110.33, 5110.35, 5
5110.352, 5110.353, 5110.354, 5110.39, 5110.55, 6
5110.56, 5110.57, 5110.58, and 5110.59; to enact 7
section 5110.06 and new section 5110.11; and to 8
repeal sections 5110.10, 5110.11, 5110.22, 9
5110.28, and 5110.351 of the Revised Code to 10
modify the Ohio's Best Rx program. 11

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

Section 1. That sections 127.16, 2921.13, 5110.01, 5110.02, 12
5110.03, 5110.05, 5110.08, 5110.09, 5110.12, 5110.13, 5110.14, 13
5110.15, 5110.16, 5110.17, 5110.18, 5110.19, 5110.21, 5110.23, 14
5110.26, 5110.27, 5110.29, 5110.32, 5110.33, 5110.35, 5110.352, 15
5110.353, 5110.354, 5110.39, 5110.55, 5110.56, 5110.57, 5110.58, 16
and 5110.59 be amended and section 5110.06 and new section 5110.11 17
of the Revised Code be enacted to read as follows: 18

Sec. 127.16. (A) Upon the request of either a state agency or 19
the director of budget and management and after the controlling 20

board determines that an emergency or a sufficient economic reason 21
exists, the controlling board may approve the making of a purchase 22
without competitive selection as provided in division (B) of this 23
section. 24

(B) Except as otherwise provided in this section, no state 25
agency, using money that has been appropriated to it directly, 26
shall: 27

(1) Make any purchase from a particular supplier, that would 28
amount to fifty thousand dollars or more when combined with both 29
the amount of all disbursements to the supplier during the fiscal 30
year for purchases made by the agency and the amount of all 31
outstanding encumbrances for purchases made by the agency from the 32
supplier, unless the purchase is made by competitive selection or 33
with the approval of the controlling board; 34

(2) Lease real estate from a particular supplier, if the 35
lease would amount to seventy-five thousand dollars or more when 36
combined with both the amount of all disbursements to the supplier 37
during the fiscal year for real estate leases made by the agency 38
and the amount of all outstanding encumbrances for real estate 39
leases made by the agency from the supplier, unless the lease is 40
made by competitive selection or with the approval of the 41
controlling board. 42

(C) Any person who authorizes a purchase in violation of 43
division (B) of this section shall be liable to the state for any 44
state funds spent on the purchase, and the attorney general shall 45
collect the amount from the person. 46

(D) Nothing in division (B) of this section shall be 47
construed as: 48

(1) A limitation upon the authority of the director of 49
transportation as granted in sections 5501.17, 5517.02, and 50
5525.14 of the Revised Code; 51

(2) Applying to medicaid provider agreements under Chapter 52
5111. of the Revised Code or payments or provider agreements under 53
the disability medical assistance program established under 54
Chapter 5115. of the Revised Code; 55

(3) Applying to the purchase of examinations from a sole 56
supplier by a state licensing board under Title XLVII of the 57
Revised Code; 58

(4) Applying to entertainment contracts for the Ohio state 59
fair entered into by the Ohio expositions commission, provided 60
that the controlling board has given its approval to the 61
commission to enter into such contracts and has approved a total 62
budget amount for such contracts as agreed upon by commission 63
action, and that the commission causes to be kept itemized records 64
of the amounts of money spent under each contract and annually 65
files those records with the clerk of the house of representatives 66
and the clerk of the senate following the close of the fair; 67

(5) Limiting the authority of the chief of the division of 68
mineral resources management to contract for reclamation work with 69
an operator mining adjacent land as provided in section 1513.27 of 70
the Revised Code; 71

(6) Applying to investment transactions and procedures of any 72
state agency, except that the agency shall file with the board the 73
name of any person with whom the agency contracts to make, broker, 74
service, or otherwise manage its investments, as well as the 75
commission, rate, or schedule of charges of such person with 76
respect to any investment transactions to be undertaken on behalf 77
of the agency. The filing shall be in a form and at such times as 78
the board considers appropriate. 79

(7) Applying to purchases made with money for the per cent 80
for arts program established by section 3379.10 of the Revised 81
Code; 82

(8) Applying to purchases made by the rehabilitation services	83
commission of services, or supplies, that are provided to persons	84
with disabilities, or to purchases made by the commission in	85
connection with the eligibility determinations it makes for	86
applicants of programs administered by the social security	87
administration;	88
(9) Applying to payments by the department of job and family	89
services under section 5111.13 of the Revised Code for group	90
health plan premiums, deductibles, coinsurance, and other	91
cost-sharing expenses;	92
(10) Applying to any agency of the legislative branch of the	93
state government;	94
(11) Applying to agreements or contracts entered into under	95
section 5101.11, 5101.20, 5101.201, 5101.21, or 5101.214 of the	96
Revised Code;	97
(12) Applying to purchases of services by the adult parole	98
authority under section 2967.14 of the Revised Code or by the	99
department of youth services under section 5139.08 of the Revised	100
Code;	101
(13) Applying to dues or fees paid for membership in an	102
organization or association;	103
(14) Applying to purchases of utility services pursuant to	104
section 9.30 of the Revised Code;	105
(15) Applying to purchases made in accordance with rules	106
adopted by the department of administrative services of motor	107
vehicle, aviation, or watercraft fuel, or emergency repairs of	108
such vehicles;	109
(16) Applying to purchases of tickets for passenger air	110
transportation;	111
(17) Applying to purchases necessary to provide public	112

notifications required by law or to provide notifications of job openings;	113 114
(18) Applying to the judicial branch of state government;	115
(19) Applying to purchases of liquor for resale by the division of liquor control;	116 117
(20) Applying to purchases of motor courier and freight services made in accordance with department of administrative services rules;	118 119 120
(21) Applying to purchases from the United States postal service and purchases of stamps and postal meter replenishment from vendors at rates established by the United States postal service;	121 122 123 124
(22) Applying to purchases of books, periodicals, pamphlets, newspapers, maintenance subscriptions, and other published materials;	125 126 127
(23) Applying to purchases from other state agencies, including state-assisted institutions of higher education;	128 129
(24) Limiting the authority of the director of environmental protection to enter into contracts under division (D) of section 3745.14 of the Revised Code to conduct compliance reviews, as defined in division (A) of that section;	130 131 132 133
(25) Applying to purchases from a qualified nonprofit agency pursuant to sections 125.60 to 125.6012 or 4115.31 to 4115.35 of the Revised Code;	134 135 136
(26) Applying to payments by the department of job and family services to the United States department of health and human services for printing and mailing notices pertaining to the tax refund offset program of the internal revenue service of the United States department of the treasury;	137 138 139 140 141
(27) Applying to contracts entered into by the department of	142

mental retardation and developmental disabilities under sections	143
5123.18, 5123.182, and 5123.199 of the Revised Code;	144
(28) Applying to payments made by the department of mental	145
health under a physician recruitment program authorized by section	146
5119.101 of the Revised Code;	147
(29) Applying to contracts entered into with persons by the	148
director of commerce for unclaimed funds collection and remittance	149
efforts as provided in division (F) of section 169.03 of the	150
Revised Code. The director shall keep an itemized accounting of	151
unclaimed funds collected by those persons and amounts paid to	152
them for their services.	153
(30) Applying to purchases made by a state institution of	154
higher education in accordance with the terms of a contract	155
between the vendor and an inter-university purchasing group	156
comprised of purchasing officers of state institutions of higher	157
education;	158
(31) Applying to the department of job and family services'	159
purchases of health assistance services under the children's	160
health insurance program part I provided for under section 5101.50	161
of the Revised Code or the children's health insurance program	162
part II provided for under section 5101.51 of the Revised Code;	163
(32) Applying to payments by the attorney general from the	164
reparations fund to hospitals and other emergency medical	165
facilities for performing medical examinations to collect physical	166
evidence pursuant to section 2907.28 of the Revised Code;	167
(33) Applying to contracts with a contracting authority or	168
administrative receiver under division (B) of section 5126.056 of	169
the Revised Code;	170
(34) Applying to reimbursements paid to the United States	171
department of veterans affairs for pharmaceutical and patient	172

supply purchases made on behalf of the Ohio veterans' home agency;	173
(35) Applying to agreements the department of job and family services enters <u>entered</u> into with terminal distributors of	174
dangerous drugs under section 5110.12 of the Revised Code.	175
(E) Notwithstanding division (B)(1) of this section, the	176
cumulative purchase threshold shall be seventy-five thousand	177
dollars for the departments of mental retardation and	178
developmental disabilities, mental health, rehabilitation and	179
correction, and youth services.	180
(F) When determining whether a state agency has reached the	181
cumulative purchase thresholds established in divisions (B)(1),	182
(B)(2), and (E) of this section, all of the following purchases by	183
such agency shall not be considered:	184
(1) Purchases made through competitive selection or with	185
controlling board approval;	186
(2) Purchases listed in division (D) of this section;	187
(3) For the purposes of the thresholds of divisions (B)(1)	188
and (E) of this section only, leases of real estate.	189
(G) As used in this section, "competitive selection,"	190
"purchase," "supplies," and "services" have the same meanings as	191
in section 125.01 of the Revised Code.	192
Sec. 2921.13. (A) No person shall knowingly make a false	193
statement, or knowingly swear or affirm the truth of a false	194
statement previously made, when any of the following applies:	195
(1) The statement is made in any official proceeding.	196
(2) The statement is made with purpose to incriminate	197
another.	198
(3) The statement is made with purpose to mislead a public	199
official in performing the public official's official function.	200
	201

(4) The statement is made with purpose to secure the payment 202
of unemployment compensation; Ohio works first; prevention, 203
retention, and contingency benefits and services; disability 204
financial assistance; retirement benefits; economic development 205
assistance, as defined in section 9.66 of the Revised Code; or 206
other benefits administered by a governmental agency or paid out 207
of a public treasury. 208

(5) The statement is made with purpose to secure the issuance 209
by a governmental agency of a license, permit, authorization, 210
certificate, registration, release, or provider agreement. 211

(6) The statement is sworn or affirmed before a notary public 212
or another person empowered to administer oaths. 213

(7) The statement is in writing on or in connection with a 214
report or return that is required or authorized by law. 215

(8) The statement is in writing and is made with purpose to 216
induce another to extend credit to or employ the offender, to 217
confer any degree, diploma, certificate of attainment, award of 218
excellence, or honor on the offender, or to extend to or bestow 219
upon the offender any other valuable benefit or distinction, when 220
the person to whom the statement is directed relies upon it to 221
that person's detriment. 222

(9) The statement is made with purpose to commit or 223
facilitate the commission of a theft offense. 224

(10) The statement is knowingly made to a probate court in 225
connection with any action, proceeding, or other matter within its 226
jurisdiction, either orally or in a written document, including, 227
but not limited to, an application, petition, complaint, or other 228
pleading, or an inventory, account, or report. 229

(11) The statement is made on an account, form, record, 230
stamp, label, or other writing that is required by law. 231

(12) The statement is made in connection with the purchase of 232
a firearm, as defined in section 2923.11 of the Revised Code, and 233
in conjunction with the furnishing to the seller of the firearm of 234
a fictitious or altered driver's or commercial driver's license or 235
permit, a fictitious or altered identification card, or any other 236
document that contains false information about the purchaser's 237
identity. 238

(13) The statement is made in a document or instrument of 239
writing that purports to be a judgment, lien, or claim of 240
indebtedness and is filed or recorded with the secretary of state, 241
a county recorder, or the clerk of a court of record. 242

(14) The statement is made with purpose to obtain an Ohio's 243
best Rx program enrollment card under section 5110.09 of the 244
Revised Code or a payment ~~from the department of job and family~~ 245
~~services~~ under section 5110.17 of the Revised Code. 246

(15) The statement is made in an application filed with a 247
county sheriff pursuant to section 2923.125 of the Revised Code in 248
order to obtain or renew a license to carry a concealed handgun or 249
is made in an affidavit submitted to a county sheriff to obtain a 250
temporary emergency license to carry a concealed handgun under 251
section 2923.1213 of the Revised Code. 252

(16) The statement is required under section 5743.72 of the 253
Revised Code in connection with the person's purchase of 254
cigarettes or tobacco products in a delivery sale. 255

(B) No person, in connection with the purchase of a firearm, 256
as defined in section 2923.11 of the Revised Code, shall knowingly 257
furnish to the seller of the firearm a fictitious or altered 258
driver's or commercial driver's license or permit, a fictitious or 259
altered identification card, or any other document that contains 260
false information about the purchaser's identity. 261

(C) No person, in an attempt to obtain a license to carry a 262

concealed handgun under section 2923.125 of the Revised Code, 263
shall knowingly present to a sheriff a fictitious or altered 264
document that purports to be certification of the person's 265
competence in handling a handgun as described in division (B)(3) 266
of section 2923.125 of the Revised Code. 267

(D) It is no defense to a charge under division (A)(6) of 268
this section that the oath or affirmation was administered or 269
taken in an irregular manner. 270

(E) If contradictory statements relating to the same fact are 271
made by the offender within the period of the statute of 272
limitations for falsification, it is not necessary for the 273
prosecution to prove which statement was false but only that one 274
or the other was false. 275

(F)(1) Whoever violates division (A)(1), (2), (3), (4), (5), 276
(6), (7), (8), (10), (11), (13), (14), or (16) of this section is 277
guilty of falsification, a misdemeanor of the first degree. 278

(2) Whoever violates division (A)(9) of this section is 279
guilty of falsification in a theft offense. Except as otherwise 280
provided in this division, falsification in a theft offense is a 281
misdemeanor of the first degree. If the value of the property or 282
services stolen is five hundred dollars or more and is less than 283
five thousand dollars, falsification in a theft offense is a 284
felony of the fifth degree. If the value of the property or 285
services stolen is five thousand dollars or more and is less than 286
one hundred thousand dollars, falsification in a theft offense is 287
a felony of the fourth degree. If the value of the property or 288
services stolen is one hundred thousand dollars or more, 289
falsification in a theft offense is a felony of the third degree. 290

(3) Whoever violates division (A)(12) or (B) of this section 291
is guilty of falsification to purchase a firearm, a felony of the 292
fifth degree. 293

(4) Whoever violates division (A)(15) or (C) of this section 294
is guilty of falsification to obtain a concealed handgun license, 295
a felony of the fourth degree. 296

(G) A person who violates this section is liable in a civil 297
action to any person harmed by the violation for injury, death, or 298
loss to person or property incurred as a result of the commission 299
of the offense and for reasonable attorney's fees, court costs, 300
and other expenses incurred as a result of prosecuting the civil 301
action commenced under this division. A civil action under this 302
division is not the exclusive remedy of a person who incurs 303
injury, death, or loss to person or property as a result of a 304
violation of this section. 305

Sec. 5110.01. As used in this chapter: 306

~~(A) "Administrative fee" means the amount specified in rules 307
adopted under division (G) of section 5110.35 of the Revised Code. 308~~

~~(B) "Children's health insurance program" means the 309
children's health insurance program part I and part II established 310
under sections 5101.50 to 5101.5110 of the Revised Code. 311~~

~~(C)(B) "Disability medical assistance program" means the 312
program established under section 5115.10 of the Revised Code. 313~~

~~(D)(C) "Medicaid program" or "medicaid" means the medical 314
assistance program established under Chapter 5111. of the Revised 315
Code. 316~~

~~(E)(D) "National drug code number" means the number 317
registered for a drug pursuant to the listing system established 318
by the United States food and drug administration under the "Drug 319
Listing Act of 1972," 86 Stat. 559, 21 U.S.C. 360, as amended. 320~~

~~(F) "Ohio's best Rx program administrator" means the entity, 321
if any, the department of job and family services contracts with 322
pursuant to section 5110.10 of the Revised Code to perform 323~~

~~administrative functions of the Ohio's best Rx program and to~~ 324
~~offer the mail order system through which Ohio's best Rx program~~ 325
~~participants may obtain drugs by mail.~~ 326

~~(G) "Ohio's best Rx program applicant" or "applicant" means~~ 327
~~an individual who signs an application for the Ohio's best Rx~~ 328
~~program and submits it to the department of job and family~~ 329
~~services, or the Ohio's best Rx program administrator, for a~~ 330
~~determination of eligibility for the program.~~ 331

~~(H)(E) "Ohio's best Rx program participant" or "participant"~~ 332
~~means an individual determined eligible for the Ohio's best Rx~~ 333
~~program and included under a valid Ohio's best Rx program~~ 334
~~enrollment card.~~ 335

~~(I)(F) "Ohio's best Rx program price" means the price a~~ 336
~~participating terminal distributor is to charge, as determined~~ 337
~~under section 5110.14 of the Revised Code, that an Ohio's best Rx~~ 338
~~program participant is to be charged for a drug included in the~~ 339
~~Ohio's best Rx program as determined under section 5110.14 of the~~ 340
~~Revised Code. "Ohio's best Rx program price" does not include~~ 341
~~either of the following:~~ 342

(1) ~~The~~ In the case of a drug dispensed by a participating 343
terminal distributor, the amount of the professional fee, if any, 344
the participating terminal distributor adds to the Ohio's best Rx 345
program price pursuant to an agreement entered into under section 346
5110.12 of the Revised Code; 347

(2) ~~The~~ In the case of a drug dispensed by a participating 348
terminal distributor or the drug mail order system included in the 349
program pursuant to section 5110.11 of the Revised Code, the 350
amount of the administrative fee, if any, the department of job 351
and family services ~~reports to the participating terminal~~ 352
~~distributor~~ determines in rules adopted under section ~~5110.29~~ 353
5110.35 of the Revised Code. 354

~~(F)~~(G) "Participating manufacturer" means a drug manufacturer 355
participating in the Ohio's best Rx program pursuant to a ~~rebate~~ 356
manufacturer agreement entered into under section 5110.21 of the 357
Revised Code. 358

~~(K)~~(H) "Participating terminal distributor" means a terminal 359
distributor of dangerous drugs participating in the Ohio's best Rx 360
program pursuant to an agreement entered into ~~with the department~~ 361
~~of job and family services~~ under section 5110.12 of the Revised 362
Code. 363

~~(L)~~(I) "Per unit price," with regard to a state health 364
benefit plan or state retirement system health benefit plan, means 365
the total amount paid to a terminal distributor of dangerous drugs 366
under ~~a state health benefit plan or state retirement system~~ 367
~~health benefit~~ the plan for one unit of a drug covered by the 368
plan, after the plan discounts or otherwise reduces the amount to 369
be paid to the terminal distributor. "Per unit price" does not 370
include any amount paid to the terminal distributor of dangerous 371
drugs under the plan as an administrative fee for dispensing the 372
drug, but includes both of the following: 373

(1) The amount that the ~~state health benefit plan or state~~ 374
~~retirement system health benefit~~ plan, or other government entity 375
or person authorized to make the payment on behalf of the plan, 376
pays to the terminal distributor of dangerous drugs; 377

(2) The amount that the beneficiary of the ~~state health~~ 378
~~benefit plan or state retirement system health benefit~~ plan pays 379
to the terminal distributor of dangerous drugs in the form of a 380
copayment, coinsurance, or other cost-sharing charge. 381

~~(M)~~(J) "Per unit rebate," with regard to a state health 382
benefit plan or state retirement system health benefit plan, means 383
all rebates, discounts, formulary fees, administrative fees, and 384
other allowances a drug manufacturer pays to the plan, or other 385

government entity or person authorized to receive all or part of 386
such payments, for a drug during a calendar year, divided by the 387
total number of units of that drug dispensed under the plan during 388
the same calendar year. 389

~~(N) "Rebate administration percentage" means the percentage 390
specified in rules adopted under division (K) of section 5110.35 391
of the Revised Code. 392~~

~~(O) "Rebate agreement" means an agreement under section 393
5110.21 of the Revised Code between the department of job and 394
family services and a drug manufacturer. 395~~

~~(P)~~(K) "State health benefit plan" means a program of health 396
care benefits offered through the Ohio med preferred provider 397
organization, or a successor entity selected by the state, to 398
which either of the following ~~apply~~ applies: 399

(1) It is provided by a collective bargaining agreement 400
authorized by division (A)(4) of section 4117.03 of the Revised 401
Code. 402

(2) It is offered by the department of administrative 403
services to state employees in accordance with section 124.81 or 404
124.82 of the Revised Code. 405

~~(Q)~~(L) "State retirement system" means all of the following: 406
the public employees retirement system, state teachers retirement 407
system, school employees retirement system, Ohio police and fire 408
pension fund, and state highway patrol retirement system. 409

~~(R)~~(M) "State retirement system health benefit plan" means a 410
plan of health care benefits offered by a state retirement system 411
under section 145.58, 742.45, 3307.39, 3309.69, or 5505.28 of the 412
Revised Code. 413

~~(S)~~(N) "Terminal distributor of dangerous drugs" has the same 414
meaning as in section 4729.01 of the Revised Code. 415

~~(T)~~(O) "Third-party payer" has the same meaning as in section 416
3901.38 of the Revised Code. 417

~~(U)~~(P) "Trade secret" has the same meaning as in section 418
1333.61 of the Revised Code. 419

~~(V)~~(O) "Usual and customary charge" means the amount a 420
participating terminal distributor or the ~~Ohio's best Rx program~~ 421
~~administrator~~ drug mail order system included in the Ohio's best 422
Rx program pursuant to section 5110.11 of the Revised Code charges 423
~~for~~ when a drug included in the program ~~to~~ is purchased by an 424
individual who does not receive a discounted price for the drug 425
pursuant to any drug discount program, including the Ohio's best 426
Rx program, a prescription drug discount card program established 427
under section 173.061 of the Revised Code, or a pharmacy 428
assistance program established by any person or government entity, 429
and for whom no third-party payer or program funded in whole or 430
part with state or federal funds is responsible for all or part of 431
the cost of the drug ~~the distributor dispenses to the individual.~~ 432

Sec. 5110.02. (A) There is hereby established the Ohio's best 433
Rx program. Except as provided in division (B) of this section 434
~~5110.10 of the Revised Code~~, the department of job and family 435
services shall administer the program. 436

(B)(1) The department may enter into a contract with any 437
person under which the person serves as the administrator of the 438
Ohio's best Rx program. Before entering into a contract for a 439
program administrator, the department shall issue a request for 440
proposals from persons seeking to be considered. The department 441
shall develop a process to be used in issuing the request for 442
proposals, receiving responses to the request, and evaluating the 443
responses on a competitive basis. In accordance with that process, 444
the department shall select the person to be awarded the contract. 445

(2) Subject to divisions (B)(4) and (5) of this section, the department may delegate to the person awarded the contract any of the department's powers or duties specified in this chapter or any other provision of the Revised Code pertaining to the Ohio's best Rx program. The terms of the contract shall specify the extent to which the powers or duties are delegated to the program administrator.

(3) In exercising powers or performing duties delegated under the contract, the program administrator is subject to the same provisions of this chapter or other provisions of the Revised Code that grant the powers or duties to the department, as well as any limitations or restrictions that are applicable to or associated with those powers or duties. Wherever the department is referred to in this chapter or another provision of the Revised Code relative to a power or duty delegated to the program administrator, both of the following are the case:

(a) If the department has delegated the power or duty in whole to the program administrator, the reference to the department is, instead, a reference to the administrator.

(b) If the department retains any part of the power or duty that is delegated to the program administrator, the reference to the department is a reference to both the department and the administrator.

(4) The terms of a contract for a program administrator shall include provisions for offering the drug mail order system included in the Ohio's best Rx program pursuant to section 5110.11 of the Revised Code. The terms of the contract may permit the administrator to offer the drug mail order system by contracting with another person.

(5) The department shall not delegate to a program administrator authority to do any of the following:

(a) Enter into contracts under this section other than a contract to offer a drug mail order system; 477
478

(b) Adopt rules under section 5110.35 or 5110.36 of the Revised Code; 479
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(c) Employ an ombudsperson pursuant to section 5110.40 of the Revised Code. 481
482

Sec. 5110.03. (A) Except as provided in division (B) of this 483
section, a drug shall be included in the Ohio's best Rx program if 484
the drug is covered by a state health benefit plan or state 485
retirement system health benefit plan or is ~~covered by~~ included in 486
a ~~rebate manufacturer~~ agreement entered into under section 5110.21 487
of the Revised Code. 488

(B) The department of job and family services may exclude 489
from the program a drug covered by a state health benefit plan or 490
state retirement system health benefit plan if the plan receives a 491
rebate for the drug from the manufacturer but the drug is not 492
~~covered by~~ included in a ~~rebate manufacturer~~ agreement entered 493
into under section 5110.21 of the Revised Code. 494

Sec. 5110.05. (A) To be eligible for the Ohio's best Rx 495
program, an individual must meet all of the following requirements 496
at the time of application or reapplication for the program: 497

(1) ~~Be~~ The individual must be a resident of this state. 498

(2) ~~Have~~ Either of the following must be the case: 499

(a) The individual has family income, as determined under 500
rules adopted pursuant to section 5110.35 of the Revised Code, 501
that does not exceed ~~two~~ three hundred ~~fifty~~ per cent of the 502
federal poverty guidelines, as revised annually by the United 503
States department of health and human services in accordance with 504
section 673(2) of the "Omnibus Budget Reconciliation Act of 1981," 505

95 Stat. 511, 42 U.S.C. 9902, as amended, ~~or be;~~ 506

(b) The individual is sixty years of age or older. 507

(3) ~~Not~~ Except as provided in division (B) of this section, 508
the individual must not have coverage for outpatient ~~prescription~~ 509
drug coverage ~~drugs~~ paid for in whole or in part by any of the 510
following: 511

(a) A third-party payer; 512

(b) An employer; 513

(c) The medicaid program; 514

~~(e)~~(d) The children's health insurance program; 515

~~(d)~~(e) The disability medical assistance program; 516

~~(e)~~(f) Another health plan or pharmacy assistance program 517
that uses state or federal funds to pay part or all of the cost of 518
the individual's outpatient ~~prescription~~ drugs, ~~other than a~~ 519
~~prescription drug discount card program established under section~~ 520
~~173.061 of the Revised Code.~~ 521

(4) ~~Not~~ The individual must not have had coverage for 522
outpatient ~~prescription drug coverage~~ ~~drugs~~ paid for by any of the 523
entities or programs specified in division (A)(3) of this section 524
during any of the four months preceding the month in which the 525
application or reapplication for the Ohio's best Rx program is 526
made, unless any of the following applies: 527

(a) The individual is sixty years of age or older. 528

(b) The third-party payer or employer that paid ~~all or part~~ 529
~~of~~ for the coverage filed for bankruptcy under federal bankruptcy 530
laws. 531

(c) The individual is no longer eligible for coverage 532
provided through a retirement plan subject to protection under the 533
"Employee Retirement Income Security Act of 1974," 88 Stat. 832, 534

29 U.S.C. 1001, as amended.

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(d) The individual is no longer eligible for the medicaid program, children's health insurance program, or disability medical assistance program.

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(e) The individual is either temporarily or permanently discharged from employment due to a business reorganization.

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~~(B) Application and annual reapplication for the Ohio's best Rx program shall be made in accordance with rules adopted under section 5110.35 of the Revised Code on a form prescribed in those rules. An individual may apply or reapply on behalf of the individual and the individual's spouse and children. The guardian or custodian of an individual may apply or reapply on behalf of the individual. An individual is not subject to division (A)(3) of this section if the individual has coverage for outpatient drugs paid for in whole or in part by any of the following:~~

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(1) A prescription drug discount card program established under section 173.061 of the Revised Code;

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(2) The workers' compensation program;

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(3) A medicare prescription drug plan offered pursuant to the "Medicare Prescription Drug, Improvement, and Modernization Act of 2003," 117 Stat. 2071, 42 U.S.C. 1395w-101, as amended, but only if all of the following are the case with respect to the particular drug being purchased through the Ohio's best Rx program:

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(a) The individual is responsible for the full cost of the drug.

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(b) The drug is not subject to a rebate from the manufacturer under the individual's medicare prescription drug plan.

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(c) The manufacturer of the drug has agreed to the Ohio's best Rx program's inclusion of individuals who have coverage

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through a medicare prescription drug plan.

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Sec. 5110.06. Application and annual reapplication for the
Ohio's best Rx program shall be made in accordance with rules
adopted by the department of job and family services under section
5110.35 of the Revised Code. An individual may apply or reapply on
behalf of the individual and the individual's spouse and children.
The guardian or custodian of an individual may apply or reapply on
behalf of the individual.

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When submitting an application, the applicant shall include
the information and documentation specified in the department's
rules as necessary to verify eligibility for the program. The
application may be submitted on a paper form prescribed and
supplied by the department or pursuant to any other application
method the department makes available for the program, including
methods that permit an individual to apply by telephone or through
the internet.

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An applicant shall attest that the information and
documentation the applicant submits with an application is
accurate to the best knowledge and belief of the applicant. In the
case of a paper application form, the applicant's signature shall
be used to certify that the applicant has attested to the accuracy
of the information and documentation. In the case of other
application methods, the application certification process
specified in the department's rules shall be used to certify that
the applicant has attested to the accuracy of the information and
documentation.

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The department shall inform each applicant that knowingly
making a false statement in an application is falsification under
section 2921.13 of the Revised Code, a misdemeanor of the first
degree. In the case of a paper application form, the department
shall provide the information by including on the form a statement

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printed in bold letters.

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Sec. 5110.08. On receipt of applications and annual reapplications, the department of job and family services shall make eligibility determinations for the Ohio's best Rx program in accordance with procedures established in rules adopted under section 5110.35 of the Revised Code. Each determination that an individual is eligible is valid for one year beginning on a date determined in accordance with the eligibility determination procedures. The beginning date may not precede the date on which the individual's eligibility is determined. Annual reapplication may be made under ~~division (B) of section 5110.05~~ 5110.06 of the Revised Code if the individual seeks to continue to participate in the program after the date eligibility would otherwise end.

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An eligibility determination under this section may not be appealed under Chapter 119., section 5101.35, or any other provision of the Revised Code.

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Sec. 5110.09. (A) The department of job and family services shall issue Ohio's best Rx program enrollment cards to or on behalf of individuals determined eligible to participate. One enrollment card may cover each member of a family determined eligible to participate. The card is valid only during the period each individual covered by the card is eligible to participate. ~~The card shall be presented to a participating terminal distributor each~~

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(B) Each time a drug included in the program is purchased under the program, the eligibility of the participant for whom the drug is dispensed shall be confirmed through the department. If the drug is being purchased from a participating terminal distributor and the participant's enrollment card is available for presentation at the time of the purchase, the purchaser shall

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present the enrollment card to the participating terminal 626
distributor. 627

Sec. 5110.11. (A) For purposes of making drugs included in 628
the Ohio's best Rx program available to participants by mail, the 629
department of job and family services shall include a drug mail 630
order system within the program. Not more than one drug mail order 631
system shall be included in the program. The program's drug mail 632
order system shall be provided in accordance with rules adopted 633
under section 5110.35 of the Revised Code. 634

(B)(1) When a drug included in the program is dispensed to a 635
participant through the program's drug mail order system, the 636
amount the participant is charged for the drug shall be the lesser 637
of the following: 638

(a) The sum of the Ohio's best Rx program price applicable to 639
the system and the administrative fee, if any, in an amount 640
determined in accordance with rules adopted under section 5110.35 641
of the Revised Code; 642

(b) The system's usual and customary charge. 643

(2) A participant shall not be charged a professional fee 644
when a drug included in the program is dispensed to the 645
participant through the program's drug mail order system. 646

Sec. 5110.12. A (A) For purposes of making drugs included in 647
the Ohio's best Rx program available to participants from terminal 648
distributors of dangerous drugs other than the drug mail order 649
system included in the program pursuant to section 5110.11 of the 650
Revised Code, the department of job and family services shall 651
enter into agreements under this section with terminal 652
distributors of dangerous drugs. Any terminal distributor of 653
dangerous drugs may enter into an agreement with the department of 654
job and family services to participate in the Ohio's best Rx 655

program ~~for purposes of dispensing drugs~~ pursuant to this section. 656
Before 657

Before entering into an agreement under this section with a 658
terminal distributor, the department shall provide the terminal 659
distributor with a formula that allows the terminal distributor to 660
calculate the price of each drug included in the program, a 661
statistically valid sampling of drug prices that includes the 662
prices of not less than two branded and two generic drugs from 663
each category of drugs included in the program, or the current 664
Ohio's best Rx program price for each drug included in the 665
program. 666

(B) An agreement entered into under this section shall do all 667
of the following: 668

~~(A)~~(1) Except as provided in division ~~(C)~~(B)(3) of this 669
section, be in effect for not less than one year; 670

~~(B)~~(2) Specify the dates that the agreement is to begin and 671
end; 672

~~(C)~~(3) Permit the participating terminal distributor to 673
terminate the agreement before the date the agreement would 674
otherwise end as specified pursuant to division (B)(2) of this 675
section by providing the department notice of early termination at 676
least thirty days before the effective date of the early 677
termination; 678

~~(D)~~(4) Require that the participating terminal distributor 679
charge an Ohio's best Rx program participant for each drug 680
included in the program the lesser of ~~(1)~~(a) the sum of the Ohio's 681
best Rx program price ~~as determined under section 5110.14 of the~~ 682
~~Revised Code~~ applicable to participating terminal distributors, 683
the professional fee permitted under division ~~(E)~~(B)(5) of this 684
section, if any, and the administrative fee under division 685

(B)(6) of this section, if any, or ~~(2)(b)~~ the terminal distributor's usual and customary charge; 686
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~~(E)(5)~~ Permit the participating terminal distributor to add to the Ohio's best Rx program price a professional fee in an amount not to exceed, except as provided in rules adopted under section 5110.35 of the Revised Code, three dollars; 688
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~~(F)(6)~~ Require the participating terminal distributor to add to the Ohio's best Rx program price an administrative fee, in an amount determined in accordance with rules adopted under section 5110.35 of the Revised Code, for each transaction in which a quantity of the drug is dispensed if an administrative fee is required by those rules; 692
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~~(G)(7)~~ Require the participating terminal distributor to disclose to each participant the amount the participant saves under the program as determined in accordance with section 5110.15 of the Revised Code; 698
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~~(H)(8)~~ Require the participating terminal distributor to submit a claim to the department under section 5110.16 of the Revised Code for each sale of a drug to a participant; 702
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~~(I)(9)~~ Permit the participating terminal distributor to deliver drugs to Ohio's best Rx program participants by mail, but not by using a drug mail order system operated in the same manner as the system included in the Ohio's best Rx program pursuant to section 5110.11 of the Revised Code. 705
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Sec. 5110.13. ~~The department of job and family services may not prohibit a~~ A terminal distributor of dangerous drugs shall not be prohibited from participating in any other program the department administers or any network of health care providers on the basis that the terminal distributor has not entered into an agreement under section 5110.12 of the Revised Code to participate 710
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in the Ohio's best Rx program. 716

~~No entity under contract with the department under section 717
5110.10 of the Revised Code may prohibit a terminal distributor of 718
dangerous drugs from participating in a program or network the 719
entity administers or operates on the basis that the terminal 720
distributor has not entered into an agreement under section 721
5110.12 of the Revised Code. 722~~

Sec. 5110.14. The Ohio's best Rx program price for a drug 723
included in the program, as described in section 5110.03 of the 724
Revised Code, shall be determined as follows: 725

(A) When the drug is dispensed through a participating 726
terminal distributor, the price shall be determined by multiplying 727
the number of units of the drug a participating terminal 728
distributor dispenses dispensed to a participant by whichever of 729
the following is applicable: 730

~~(A)(1) If the drug is not subject to included in a rebate 731
manufacturer agreement entered into under section 5110.21 of the 732
Revised Code, the amount computed under division (A)(1) or (2) of 733
section 5110.27 of the Revised Code, as applicable; 734~~

~~(B)(2) If the drug is subject to included in a rebate 735
manufacturer agreement entered into under section 5110.21 of the 736
Revised Code, the amount computed under division (C) of section 737
5110.27 of the Revised Code. 738~~

(B) When the drug is dispensed through the drug mail order 739
system included in the program pursuant to section 5110.11 of the 740
Revised Code, the price shall be an amount not exceeding the price 741
that would be charged for the same drug pursuant to division 742
(A)(1) or (2) of this section. The amount that may be charged 743
under this division is subject to the rules adopted under section 744
5110.35 of the Revised Code governing the drug mail order system. 745

Sec. 5110.15. The amount that an Ohio's best Rx program 746
participant saves under the program on a transaction for a drug 747
included in the program shall be determined by subtracting the sum 748
of the following from the usual and customary charge for that 749
quantity of the drug ~~the participating terminal distributor or~~ 750
~~Ohio's best Rx program administrator dispenses~~ dispensed to the 751
participant by the participating terminal distributor or the drug 752
mail order system included in the program pursuant to section 753
5110.11 of the Revised Code: 754

(A) The Ohio's best Rx program price ~~multiplied by the number~~ 755
~~of units of the drug dispensed~~ that applies to the transaction; 756

(B) ~~The~~ When the transaction occurs through a participating 757
terminal distributor rather than the program's drug mail order 758
system, the professional fee, if any, the distributor ~~or~~ 759
~~administrator~~ is permitted to charge pursuant to an agreement 760
entered into under section 5110.12 of the Revised Code ~~or a~~ 761
~~contract under section 5110.10 of the Revised Code;~~ 762

(C) The administrative fee, if any, the department of job and 763
family services ~~reports to the distributor or administrator~~ 764
specifies in rules adopted under section ~~5110.29~~ 5110.35 of the 765
Revised Code. 766

Sec. 5110.16. A ~~participating terminal distributor or the~~ 767
~~Ohio's best Rx program administrator shall submit a claim~~ shall be 768
submitted to the department of job and family services for each 769
drug dispensed to an Ohio's best Rx program participant. The 770
participating terminal distributor or the drug mail order system 771
included in the program pursuant to section 5110.11 of the Revised 772
Code that dispensed the drug shall submit the claim not later than 773
thirty days after the drug is dispensed. The claim shall be 774
submitted in accordance with the electronic method provided for in 775

rules adopted under section 5110.35 of the Revised Code. 776

The claim shall specify all of the following: 777

(A) The prescription number of the participant's prescription 778
under which the drug is dispensed to the participant; 779

(B) The name of, and national drug code number for, the drug 780
dispensed to the participant; 781

(C) The number of units of the drug dispensed to the 782
participant; 783

(D) The amount ~~the distributor or administrator charged~~ the 784
participant was charged for the drug; 785

(E) The date ~~that the distributor or administrator dispensed~~ 786
the drug was dispensed to the participant; 787

(F) Any additional information required by rules adopted 788
under section 5110.35 of the Revised Code. 789

Sec. 5110.17. (A) In accordance with rules adopted under 790
section 5110.35 of the Revised Code and subject to section 5110.19 791
of the Revised Code, the department of job and family services 792
shall ~~pay a participating terminal distributor or the Ohio's best~~ 793
~~Rx program administrator~~ make payments under the Ohio's best Rx 794
program for complete and timely claims submitted under section 795
5110.16 of the Revised Code for drugs included in the program that 796
are ~~covered by~~ also included in a rebate manufacturer agreement 797
entered into under section 5110.21 of the Revised Code. The 798
payment for a complete and timely claim shall be made by a date 799
that is not later than two weeks after ~~the claim is received by~~ 800
the department receives the claim from the participating terminal 801
distributor or the drug mail order system included in the program 802
pursuant to section 5110.11 of the Revised Code. 803

(B) Subject to division (D) of this section, the amount to be 804

paid for a claim shall be determined as follows:

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(1) Multiply the ~~rebate~~ manufacturer payment amount for the national drug code number for the drug for which the claim is made, as agreed to under division ~~(B)(4)(a)~~(D)(1) of section 5110.21 of the Revised Code or computed under division (B) of section 5110.27 of the Revised Code, as applicable, by the number of units of the drug dispensed to the Ohio's best Rx program participant;

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(2) If rules adopted under section 5110.35 of the Revised Code require that program participants be charged an administrative fee ~~was charged~~, for each transaction in which a quantity of the drug was dispensed, subtract from the amount computed under division (B)(1) of this section the administrative fee amount specified in those ~~rules adopted under section 5110.35 of the Revised Code.~~

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(C) The department may combine the claims from ~~submitted by a~~ participating terminal distributor or the ~~administrator~~ program's drug mail order system to make aggregate payments under this section to the distributor or ~~administrator~~ system.

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(D) If the total of the amounts computed under division (B) of this section for any period for which payments are due is a negative number, the participating terminal distributor or ~~administrator~~ the program's drug mail order system that submitted the claims has been overpaid for the ~~claims submitted under section 5110.16 of the Revised Code.~~ When there is an overpayment, the department shall reduce future payments ~~to the terminal distributor or administrator~~ made under this section to the distributor or system or collect an amount from the ~~terminal distributor or administrator~~ system sufficient to reimburse the department for the overpayment.

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Sec. 5110.18. Neither ~~the department of job and family~~ 835
~~services nor the Ohio's best Rx program administrator~~ may charge a 836
participating terminal distributor nor the drug mail order system 837
included in the Ohio's best Rx program pursuant to section 5110.11 838
of the Revised Code may be charged by the department of job and 839
family services for the submission or processing of a claim under 840
sections 5110.16 and 5110.17 of the Revised Code. 841

Sec. 5110.19. The department of job and family services may 842
not make a payment under section 5110.17 of the Revised Code for a 843
claim submitted under section 5110.16 of the Revised Code if any 844
of the following are the case: 845

(A) The claim is submitted by either a terminal distributor 846
of dangerous drugs that is ~~neither~~ not a participating terminal 847
distributor ~~nor the Ohio's best Rx program administrator~~ or a drug 848
mail order system that is not the system included in the Ohio's 849
best Rx program pursuant to section 5110.11 of the Revised Code. 850

(B) The claim is for a drug that is not included in the 851
program. 852

(C) The claim is for a drug included in the program but the 853
drug is dispensed to an individual who is not covered by a valid 854
Ohio's best Rx program enrollment card. 855

(D) A person or government entity has paid the participating 856
terminal distributor or the ~~administrator~~ program's drug mail 857
order system through any other prescription drug coverage program 858
or prescription drug discount program for dispensing the drug, 859
unless the payment is reimbursement for redeeming a coupon or is 860
an amount directly paid by a drug manufacturer to the ~~terminal~~ 861
distributor or system for dispensing drugs to residents of a 862
long-term care facility. 863

Sec. 5110.21. (A) ~~A~~ For purposes of participating in the 864
Ohio's best Rx program, any drug manufacturer may enter into a 865
~~rebate~~ an agreement under this section with the department of job 866
and family services regarding drugs it manufactures. The agreement 867
shall specify the time it is to be in effect, which shall be not 868
less than one year from the date the agreement is entered into. 869

(B) The agreement shall do all of the following: 870

(1) Specify which of the manufacturer's drugs are included in 871
the agreement; 872

(2) Permit the department to remove a drug from the agreement 873
in the event of a dispute over the drug's utilization; 874

(3) Require that the manufacturer make a ~~rebate~~ payment to 875
the department in an amount that complies with division (D) of 876
this section for each drug ~~specified under division (B)(1) of this~~ 877
~~section~~ included in the agreement that is dispensed to an Ohio's 878
best Rx program participant; 879

~~(4)(a) Require that the per unit rebate be in an amount equal~~ 880
~~to the greater of the following:~~ 881

~~(i) The weighted average of the per unit rebates for the drug~~ 882
~~as computed under division (C)(1) of this section;~~ 883

~~(ii) A per unit amount specified by the manufacturer.~~ 884

~~(b) Require that the rebate payment for a quantity of a drug~~ 885
~~dispensed to an Ohio's best Rx participant be equal to the amount~~ 886
~~determined by multiplying the applicable per unit rebate by the~~ 887
~~number of units dispensed.~~ 888

~~(5) Specify the intervals at which the manufacturer will~~ 889
~~report to the department amounts specified pursuant to division~~ 890
~~(B)(4)(a)(ii) of this section;~~ 891

~~(6) Require that the manufacturer make the rebate payments to~~ 892

the department on a quarterly basis or in accordance with a 893
schedule established by rules adopted under section 5110.35 of the 894
Revised Code. 895

(C) For each drug included in the agreement, the agreement 896
may establish a process for referring Ohio's best Rx program 897
applicants to patient assistance programs operated by the 898
manufacturer if the manufacturer agrees to refer to the Ohio's 899
best Rx program residents of this state who apply but are 900
ineligible for the manufacturer's patient assistance programs. 901

(D)(1) The manufacturer's per unit payment to the department 902
for a drug included in the agreement shall be an amount equal to 903
the greater of the following: 904

(a) The weighted average of the per unit rebates for the 905
drug, as computed under division (E)(1) of this section; 906

(b) Subject to division (D)(3) of this section, a per unit 907
amount specified by the manufacturer. 908

(2) The payment for a quantity of a drug dispensed to an 909
Ohio's best Rx program participant shall be equal to the amount 910
determined by multiplying the per unit payment applicable under 911
division (D)(1) of this section by the number of units dispensed. 912

(3) In the case of an agreement under which the manufacturer 913
specifies a per unit amount for a drug, all of the following 914
apply: 915

(a) The agreement shall specify the intervals at which the 916
manufacturer will report the per unit amount to the department. 917

(b) If a computation cannot be made under division (E)(1) of 918
this section because the department has not received the necessary 919
information to make the computation, the manufacturer shall use 920
its best efforts to ensure that it specifies a per unit amount for 921
the drug that is equal to or greater than its estimate of the 922

average of the per unit rebates for the drug.

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(c) If a computation is not made under division (E)(1) of this section but can be made within twelve months after the manufacturer enters into the agreement, and the computation demonstrates that the per unit amount specified by the manufacturer is less than the amount computed under division (E)(1) of this section, the manufacturer shall make an aggregate payment to the department in an amount equal to the difference between the total amount of the per unit payments that were made and the total amount that would have been paid by using the amount computed under division (E)(1) of this section. The department shall promptly notify the manufacturer of the amount owed, and the manufacturer shall make an aggregate payment of the amount owed not later than thirty days after receiving the department's notice. Aggregate manufacturer payments received under this section shall be deposited to the credit of the Ohio's best Rx program fund created by section 5110.32 of the Revised Code.

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(E)(1) For the purposes of division ~~(B)(4)(a)(i)~~(D)(1)(a) of this section, once each year the department shall compute the weighted average of the per unit rebates for each drug using. In making the computation, the department shall use the information available to the department from submissions under division (A)(4) of section 5110.25 of the Revised Code and the number of individuals eligible for benefits under a state health benefit plan or state retirement system health benefit plan. The computation shall be made in accordance with ~~section 5110.28 of the Revised Code~~ and rules adopted under section 5110.35 of the Revised Code.

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(2) If no computation can be made under division ~~(C)~~(E)(1) of this section, the ~~rebate~~ manufacturer payment for the drug shall be the amount specified under ~~(B)(4)(a)(ii)~~ division (D)(1)(b) of this section.

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~~(D)~~(F) The department shall seek written confirmation from the centers for medicare and medicaid services that manufacturer payments under this section are exempt from the medicaid best price computation applicable under Title XIX of the "Social Security Act," 79 Stat. 286 (1965), 42 U.S.C. 1396r-8, as amended. The provisions of this section do not require a manufacturer to make a manufacturer payment that would establish the manufacturer's medicaid best price for a drug.

(G) On submission to the department by a manufacturer that has entered into a ~~rebate~~ an agreement under this section of a request the department considers reasonable, the department shall permit the manufacturer to audit claims submitted under section 5110.16 of the Revised Code.

Sec. 5110.23. (A) The department of job and family services shall compile both of the following:

(1) A list consisting of the name of each drug manufacturer that enters into a ~~rebate~~ manufacturer agreement under section 5110.21 of the Revised Code and the names of the drugs included in each ~~rebate~~ manufacturer agreement;

(2) A list consisting of the name of each participating terminal distributor and the name of the drug mail order system included in the Ohio's best Rx program pursuant to section 5110.11 of the Revised Code.

(B) The lists compiled under this section are public records for the purpose of section 149.43 of the Revised Code. The department shall specifically make the lists available to physicians, participating terminal distributors, and other health professionals.

Sec. 5110.26. In submitting information about a drug under section 5110.25 of the Revised Code, the department of

administrative services and each state retirement system shall do 985
all of the following: 986

(A) ~~Compute and submit information separately for~~ For each of 987
the drug's national drug code numbers, compute individual 988
information or submit a formula that would permit the 989
determination of individual information; 990

(B) Submit the formula, per unit price, or formula and per 991
unit price information after each change to the formula or per 992
unit price, unless the formula or per unit price changes more than 993
once a week, in which case submit the formula or per unit price 994
information at least once each week; 995

(C) Provide for the formula or per unit price information to 996
reflect the formula or per unit price as most recently changed; 997

(D) Submit the information regarding the per unit rebate once 998
a year and provide for the information to reflect the per unit 999
rebate for the previous calendar year. 1000

Sec. 5110.27. In accordance with ~~section 5110.28 of the~~ 1001
~~Revised Code and~~ rules adopted under section 5110.35 of the 1002
Revised Code, the department of job and family services shall do 1003
all of the following for each drug included in the Ohio's best Rx 1004
program: 1005

(A) On receipt of each submission of formula or per unit 1006
price information under division (A)(3) of section 5110.25 of the 1007
Revised Code, or, at the department's discretion, more frequent 1008
intervals, the department shall do the following using the 1009
information available to the department from those submissions: 1010

(1) If the drug is covered by one or more state health 1011
benefit plans or state retirement system health benefit plans, 1012
compute the weighted average of the per unit prices under those 1013
plans; 1014

(2) If the drug is not covered by any state health benefit 1015
plan or state retirement system health benefit plan, compute a 1016
weighted average per unit price using the formula information 1017
received under division (A)(3) of section 5110.25 of the Revised 1018
Code for comparable drugs covered by one or more state health 1019
benefit plans or state retirement system health benefit plans; 1020

(3) Compute the weighted averages required by divisions 1021
(A)(1) and (2) of this section by using the number of individuals 1022
eligible for benefits under a state health benefit plan or state 1023
retirement system health benefit plan. 1024

(B) If the drug is ~~covered by~~ included in a ~~rebate 1025~~
manufacturer agreement entered into under section 5110.21 of the 1026
Revised Code and the department has established a ~~rebate~~ program 1027
administration percentage by rule adopted under section 5110.35 of 1028
the Revised Code, at intervals specified by the department, the 1029
department shall do both of the following: 1030

(1) Multiply the amount agreed to under division 1031
~~(B)(4)(a)(D)(1)~~ of section 5110.21 of the Revised Code by the 1032
~~rebate~~ program administration percentage; 1033

(2) Subtract the product determined under division (B)(1) of 1034
this section from the amount agreed to under division 1035
~~(B)(4)(a)(D)(1)~~ of section 5110.21 of the Revised Code. 1036

(C) If the drug is ~~covered by~~ included in a ~~rebate 1037~~
manufacturer agreement entered into under section 5110.21 of the 1038
Revised Code, on receipt of each submission of formula or per unit 1039
price information under division (A)(3) of section 5110.25 of the 1040
Revised Code, or, at the department's discretion, more frequent 1041
intervals, the department shall subtract the amount agreed to 1042
under division ~~(B)(4)(D)(1)~~ of section 5110.21 of the Revised Code 1043
or the amount computed under division (B) of this section, as 1044
applicable, from the applicable amount computed under division 1045

(A)(1) or (2) of this section. 1046

Sec. 5110.29. The department of job and family services shall 1047
report all of the following to each participating terminal 1048
distributor and the ~~Ohio's best Rx program administrator~~ drug mail 1049
order system included in the Ohio's best Rx program pursuant to 1050
section 5110.11 of the Revised Code in a manner enabling the 1051
distributor and ~~administrator~~ system to comply with section 1052
5110.14 of the Revised Code: 1053

(A) For each drug included in the Ohio's best Rx program that 1054
is not ~~covered by~~ included in a rebate manufacturer agreement 1055
entered into under section 5110.21 of the Revised Code, the 1056
results of the department's computations under division (A) of 1057
section 5110.27 of the Revised Code. 1058

(B) For each drug included in the program that is ~~covered by~~ 1059
also included in a rebate manufacturer agreement entered into 1060
under section 5110.21 of the Revised Code, the results of the 1061
department's computations under division (C) of section 5110.27 of 1062
the Revised Code. 1063

(C) The administrative fee, if any, determined by the 1064
department in accordance with rules adopted under section 5110.35 1065
of the Revised Code. 1066

Sec. 5110.32. (A) The Ohio's best Rx program fund is hereby 1067
created. The fund shall be in the custody of the treasurer of 1068
state, but shall not be part of the state treasury. The fund shall 1069
consist of the following: 1070

(1) ~~Rebate Manufacturer~~ payments made by participating 1071
manufacturers ~~made~~ pursuant to agreements under section 5110.21 of 1072
the Revised Code, including any aggregate manufacturer payments 1073
made under division (D)(3)(c) of that section; 1074

(2) Administrative fees, if any administrative fee is 1075

determined by the department of job and family services in rules 1076
adopted under section 5110.35 of the Revised Code; 1077

(3) Any amounts donated to the fund and accepted by the 1078
department; 1079

(4) The fund's investment earnings. 1080

(B) ~~The department of job and family services shall use money~~ 1081
Money in the Ohio's best Rx program fund shall be used to make 1082
~~payments to participating terminal distributors and the Ohio's~~ 1083
~~best Rx program administrator~~ under section 5110.17 of the Revised 1084
Code. 1085

Sec. 5110.33. (A) The Ohio's best Rx administration fund is 1086
hereby created in the state treasury. The treasurer of state shall 1087
transfer from the Ohio's best Rx program fund to the Ohio's best 1088
Rx administration fund amounts equal to the following: 1089

(1) Amounts resulting from application of the ~~rebate program~~ 1090
administration percentage, if a program administration percentage 1091
is determined by the department of job and family services in 1092
rules adopted under section ~~5110.354~~ 5110.35 of the Revised Code; 1093

(2) The amount of the administrative fees charged Ohio's best 1094
Rx participants, if an administrative fee is determined by the 1095
department of job and family services in rules adopted under 1096
section 5110.35 of the Revised Code; 1097

(3) The amount of any donations credited to the Ohio's best 1098
Rx program fund; 1099

(4) The amount of investment earnings credited to the Ohio's 1100
best Rx program fund. 1101

The treasurer of state shall make the transfers in accordance 1102
with a schedule developed by the treasurer of state and the 1103
department of job and family services. 1104

(B) The department of job and family services shall use money 1105
in the Ohio's best Rx administration fund to pay the 1106
administrative costs of the Ohio's best Rx program, including, but 1107
not limited to, costs associated with contracted services, staff, 1108
outreach activities, computers and network services, and the 1109
Ohio's best Rx program council. 1110

Sec. 5110.35. The department of job and family services shall 1111
adopt rules in accordance with Chapter 119. of the Revised Code to 1112
implement the Ohio's best Rx program. The rules shall provide for 1113
all of the following: 1114

(A) Determination of family income for the purpose of 1115
division (A)(2)(a) of section 5110.05 of the Revised Code; 1116

(B) For the purpose of ~~division (B) of section 5110.05~~ 1117
5110.06 of the Revised Code, the application and annual 1118
reapplication process for the program, including the information 1119
and documentation to be submitted with applications and 1120
reapplications ~~for the purpose of verifying~~ to verify eligibility 1121
and a process to be used in certifying that an applicant has 1122
attested to the accuracy of the information and documentation 1123
submitted with the application; 1124

~~(C) For the purpose of division (B) of section 5110.05 of the~~ 1125
~~Revised Code and subject to section 5110.351 of the Revised Code,~~ 1126
~~the application form for the program;~~ 1127

~~(D)~~ The method of providing information about the medicaid 1128
program to applicants under section 5110.07 of the Revised Code; 1129

~~(E)~~(D) For the purpose of section 5110.08 of the Revised 1130
Code, eligibility determination procedures; 1131

(E) Standards and procedures governing the drug mail order 1132
system included in the program pursuant to section 5110.11 of the 1133
Revised Code; 1134

(F) Subject to section 5110.352 of the Revised Code, 1135
periodically increasing the maximum professional fee that 1136
participating terminal distributors may charge Ohio's best Rx 1137
program participants pursuant to an agreement entered into under 1138
section 5110.12 of the Revised Code ~~or the Ohio's best Rx program~~ 1139
~~administrator may charge under a contract entered into under~~ 1140
~~section 5110.10 of the Revised Code;~~ 1141

(G) Subject to section 5110.353 of the Revised Code, the 1142
amount of the administrative fee, if any, ~~participating terminal~~ 1143
~~distributors are to charge that~~ Ohio's best Rx program 1144
participants ~~under section 5110.12 of the Revised Code or the~~ 1145
~~Ohio's best Rx program administrator may charge under a contract~~ 1146
~~entered into under section 5110.10 of the Revised Code~~ are to be 1147
charged under the program; 1148

(H) The electronic method for ~~participating terminal~~ 1149
~~distributors and the Ohio's best Rx program administrator to~~ 1150
~~submit~~ submission of claims to the department under section 1151
5110.16 of the Revised Code; 1152

(I) Additional information ~~participating terminal~~ 1153
~~distributors and the Ohio's best Rx program administrator shall~~ 1154
~~include~~ to be included on claims submitted under section 5110.16 1155
of the Revised Code that the department determines is necessary 1156
for the department to be able to make payments under section 1157
5110.17 of the Revised Code; 1158

(J) The method for making payments ~~to participating terminal~~ 1159
~~distributors or the Ohio's best Rx program administrator~~ under 1160
section 5110.17 of the Revised Code; 1161

(K) Subject to section 5110.354 of the Revised Code, the 1162
percentage, if any, that is the ~~rebate~~ program administration 1163
percentage; 1164

(L) If the department determines it is best that 1165

participating manufacturers make ~~rebates~~ payments under section 1166
5110.21 of the Revised Code on a basis other than quarterly, a 1167
schedule for ~~payment of the rebates~~ making the payments; 1168

(M) The process for the department of administrative services 1169
and state retirement systems to calculate and submit the 1170
information required by section 5110.25 of the Revised Code; 1171

(N) Procedures for making computations under sections 5110.21 1172
and 5110.27 of the Revised Code; 1173

(O) Standards and procedures for the use and preservation of 1174
records regarding the Ohio's best Rx program ~~by the department and~~ 1175
~~the Ohio's best Rx program administrator~~ pursuant to section 1176
5110.59 of the Revised Code; 1177

(P) ~~For the purpose of section 5110.10 of the Revised Code,~~ 1178
~~the standards and procedures governing the operation of the mail~~ 1179
~~order system by the Ohio's best Rx program administrator;~~ 1180

~~(Q)~~ The efficient administration of other provisions of this 1181
chapter for which the department determines rules are necessary. 1182

Sec. 5110.352. As used in this section, "medicaid dispensing 1183
fee" means the dispensing fee established under section 5111.071 1184
of the Revised Code for the medicaid program. 1185

In adopting a rule under division (F) of section 5110.35 of 1186
the Revised Code increasing the maximum amount of the professional 1187
fee participating terminal distributors may charge Ohio's best Rx 1188
program participants pursuant to an agreement entered into under 1189
section 5110.12 of the Revised Code ~~and the Ohio's best Rx program~~ 1190
~~administrator may charge under a contract entered into under~~ 1191
~~section 5110.10 of the Revised Code~~, the department of job and 1192
family services shall review the amount of the professional fee 1193
once a year or, at the department's discretion, at more frequent 1194
intervals and. The department shall not increase the professional 1195

fee to an amount exceeding the medicaid dispensing fee. 1196

A participating terminal distributor ~~and the Ohio's best Rx~~ 1197
~~program administrator~~ may charge a maximum three dollar 1198
professional fee regardless of whether the medicaid dispensing fee 1199
for that drug is less than that amount. The department, however, 1200
may not adopt a rule increasing the maximum professional fee for 1201
that drug until the medicaid dispensing fee for that drug exceeds 1202
that amount. 1203

Sec. 5110.353. (A) Once a year or, at the discretion of the 1204
department of job and family services, at more frequent intervals, 1205
the department shall determine the amount, if any, ~~to be specified~~ 1206
~~in a rule adopted under division (G) of section 5110.35 of the~~ 1207
~~Revised Code as the administrative fee. In determining the amount~~ 1208
~~of the administrative fee, the department shall determine an~~ 1209
~~amount, not exceeding that each Ohio's best Rx program participant~~ 1210
will be charged as an administrative fee to be used in paying the 1211
administrative costs of the program. The fee, which shall not 1212
exceed one dollar per transaction, shall be specified in rules 1213
adopted under section 5110.35 of the Revised Code. In adopting the 1214
rules, the department shall specify a fee that results in an 1215
amount that equals or is less than the amount needed to cover the 1216
administrative costs of the Ohio's best Rx program when added to 1217
the sum of the following: 1218

(1) The amount resulting from the ~~application of the rebate~~ 1219
program administration percentage, if the department determines a 1220
program administration percentage in rules adopted under section 1221
5110.35 of the Revised Code; 1222

(2) The investment earnings of the Ohio's best Rx program 1223
fund created by section 5110.32 of the Revised Code; 1224

(3) Any amounts accepted by the department as donations to 1225
the Ohio's best Rx program fund created by section 5110.32 of the 1226

Revised Code. 1227

(B) Once a year or, at the discretion of the department, at 1228
more frequent intervals, the department shall report the 1229
methodology underlying the determination of the administrative fee 1230
to the Ohio's best Rx program council. 1231

Sec. 5110.354. (A) At least once a year or, at the discretion 1232
of the department of job and family services, at more frequent 1233
intervals, the department shall determine the percentage, if any, 1234
~~to be specified in a rule adopted under division (K) of section~~ 1235
~~5110.35 of the Revised Code as the rebate administration~~ 1236
percentage of each manufacturer payment made under an agreement 1237
entered into under section 5110.21 of the Revised Code that will 1238
be used in paying the administrative costs of the Ohio's best Rx 1239
program. The percentage, which shall not exceed five per cent, 1240
shall ~~result~~ be specified in rules adopted under section 5110.35 1241
of the Revised Code. In adopting the rules, the department shall 1242
specify a percentage that results in an amount that equals or is 1243
less than the amount needed to cover the administrative costs of 1244
the Ohio's best Rx program when added to the sum of the following: 1245

(1) The amount resulting from administrative fee specified in 1246
fees, if the department determines an administrative fee in rules 1247
adopted under section ~~5110.353~~ 5110.35 of the Revised Code; 1248

(2) The investment earnings of the Ohio's best Rx program 1249
fund created by section 5110.32 of the Revised Code; 1250

(3) Any amounts accepted by the department as donations to 1251
the Ohio's best Rx program fund created by section 5110.32 of the 1252
Revised Code. 1253

(B) Once a year or, at the discretion of the department, at 1254
more frequent intervals, the department shall report the 1255
methodology underlying the determination of the ~~rebate~~ program 1256

administration percentage to the Ohio's best Rx program council. 1257

Sec. 5110.39. Not later than the first day of March of each 1258
year, the department of job and family services shall do all of 1259
the following: 1260

(A) Create a list of the twenty-five drugs most often 1261
dispensed to Ohio's best Rx program participants under the 1262
program, using data from the most recent six-month period for 1263
which the data is available; 1264

(B) Determine the average amount that ~~participating terminal~~ 1265
~~distributors charge~~ participants are charged under the program, on 1266
a date selected by the department, ~~participants~~ for each drug 1267
included on the list created under division (A) of this section; 1268

(C) Determine, for the date selected for division (B) of this 1269
section, the average usual and customary charge ~~of participating~~ 1270
~~terminal distributors~~ for each drug included on the list created 1271
under division (A) of this section; 1272

(D) By comparing the average charges determined under 1273
divisions (B) and (C) of this section, determine the average 1274
percentage savings ~~in the amount participating terminal~~ 1275
~~distributors charge~~ Ohio's best Rx program participants receive 1276
for each drug included on the list created under division (A) of 1277
this section. 1278

Sec. 5110.55. Information transmitted by or to any of the 1279
following for any purpose related to the Ohio's best Rx program is 1280
confidential to the extent required by federal and state law: 1281

(A) Drug manufacturers; 1282

(B) Terminal distributors of dangerous drugs; 1283

(C) ~~The Ohio's best Rx program administrator;~~ 1284

~~(D)~~ The department of job and family services and any person 1285

under contract with the department pursuant to division (B) of 1286
section 5110.02 of the Revised Code to serve as the program's 1287
administrator; 1288

~~(E)~~(D) The department of administrative services; 1289

~~(F)~~(E) The state retirement systems; 1290

~~(G)~~(F) A state health benefit plan or state retirement system 1291
health benefit plan; 1292

~~(H)~~(G) Ohio's best Rx program participants; 1293

~~(I)~~(H) Any other government entity or person. 1294

Sec. 5110.56. (A) Except as provided by section 5110.57 of 1295
the Revised Code, all of the following are trade secrets, are not 1296
public records for the purposes of section 149.43 of the Revised 1297
Code, and shall not be used, released, published, or disclosed in 1298
a form that reveals a specific drug or the identity of a drug 1299
manufacturer: 1300

(1) The amounts determined under section 5110.17 of the 1301
Revised Code; 1302

(2) Information disclosed in a ~~rebate~~ manufacturer agreement 1303
entered into under section 5110.21 of the Revised Code or in 1304
communications related to a ~~rebate~~ an agreement; 1305

(3) Information that the department of administrative 1306
services and state retirement systems submit to the department of 1307
job and family services under divisions (A)(3) and (4) of section 1308
5110.25 of the Revised Code; 1309

(4) The elements of the computations under division ~~(C)~~(E) of 1310
section 5110.21 of the Revised Code and under section 5110.27 of 1311
the Revised Code and any results of those computations that reveal 1312
or could be used to reveal the drug pricing, manufacturer payment, 1313
or rebate information and amounts used to make the computations. 1314

(B) No person or government entity shall use or reveal any information specified in division (A) of this section except as required for the implementation of this chapter.

Sec. 5110.57. Sections 5110.55 and 5110.56 of the Revised Code shall not preclude the department of job and family services from disclosing information necessary for the implementation of this chapter, including the Ohio's best Rx program price ~~to participating terminal distributors or the Ohio's best Rx program administrator~~ when it is disclosed under section 5110.29 of the Revised Code to participating terminal distributors or the drug mail order system included in the Ohio's best Rx program pursuant to section 5110.11 of the Revised Code.

Sec. 5110.58. (A) As used in this section, "identifying information" means information that identifies or could be used to identify an Ohio's best Rx program applicant or participant. "Identifying information" does not include aggregate information about applicants and participants that does not identify and could not be used to identify an individual applicant or participant.

(B) Except as provided in divisions (C), (D), and (E) of this section, no person or government entity shall sell, solicit, disclose, receive, or use identifying information or knowingly permit the use of identifying information.

(C)(1) The department of job and family services ~~and the Ohio's best Rx program administrator~~ may solicit, disclose, receive, or use identifying information or knowingly permit the use of identifying information for a purpose directly connected to the administration of the Ohio's best Rx program, including disclosing and knowingly permitting the use of identifying information included in a claim that a participating manufacturer audits pursuant to division ~~(D)~~(G) of section 5110.21 of the

Revised Code, contacting Ohio's best Rx program applicants or 1345
participants regarding participation in the program, and notifying 1346
applicants and participants regarding participating terminal 1347
distributors and the drug mail order system included in the 1348
program pursuant to section 5110.11 of the Revised Code. 1349

(2) The department ~~and administrator~~ may solicit, disclose, 1350
receive, or use identifying information or knowingly permit the 1351
use of identifying information to the extent required by federal 1352
law. 1353

(3) The department ~~and administrator~~ may disclose identifying 1354
information to the Ohio's best Rx program applicant or participant 1355
who is the subject of that information or to the parent, spouse, 1356
guardian, or custodian of that applicant or participant. 1357

(D)(1) A participating terminal distributor ~~or the Ohio's~~ 1358
~~best Rx program administrator~~ may solicit, disclose, receive, or 1359
use identifying information or knowingly permit the use of 1360
identifying information to the extent required or permitted by an 1361
agreement the distributor enters into under section 5110.12 of the 1362
Revised Code ~~or a contract the administrator enters into under~~ 1363
~~section 5110.10 of the Revised Code.~~ 1364

(2) The drug mail order system included in the program 1365
pursuant to section 5110.11 of the Revised Code may solicit, 1366
disclose, receive, or use identifying information or knowingly 1367
permit the use of identifying information to the extent required 1368
or permitted by the department. 1369

(E) A participating manufacturer may, for the purpose of 1370
auditing a claim pursuant to division ~~(D)~~(G) of section 5110.21 of 1371
the Revised Code, solicit, receive, and use identifying 1372
information included in the claim. 1373

Sec. 5110.59. The department of job and family services ~~and~~ 1374

~~the Ohio's best Rx program administrator shall use and preserve~~ 1375
~~records regarding the Ohio's best Rx program in accordance with~~ 1376
~~rules adopted under section 5110.35 of the Revised Code. This~~ 1377
~~section applies to the department's or administrator's use and~~ 1378
~~preservation of~~ The department shall use and preserve the records 1379
in accordance with those rules, regardless of whether the 1380
department generated the records or received or generated by the 1381
~~department, any other~~ them from another government entity, or any 1382
person. 1383

Section 2. That existing sections 127.16, 2921.13, 5110.01, 1384
5110.02, 5110.03, 5110.05, 5110.08, 5110.09, 5110.12, 5110.13, 1385
5110.14, 5110.15, 5110.16, 5110.17, 5110.18, 5110.19, 5110.21, 1386
5110.23, 5110.26, 5110.27, 5110.29, 5110.32, 5110.33, 5110.35, 1387
5110.352, 5110.353, 5110.354, 5110.39, 5110.55, 5110.56, 5110.57, 1388
5110.58, and 5110.59 and sections 5110.10, 5110.11, 5110.22, 1389
5110.28, and 5110.351 of the Revised Code are hereby repealed. 1390

Section 3. Divisions (D)(3)(b) and (c) of section 5110.21 of 1391
the Revised Code, as amended by this act, apply only with respect 1392
to agreements that are entered into under that section on and 1393
after the effective date of this act. 1394