

# As Introduced

128th General Assembly  
Regular Session  
2009-2010

S. B. No. 277

Senator Jones

Cosponsors: Senators Gibbs, Stewart

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## A B I L L

To enact new sections 5111.07 and 5111.071 and 1  
sections 5111.072 and 5111.085, to repeal sections 2  
5111.07 and 5111.071 of the Revised Code, and to 3  
repeal Section 309.30.76 of Am. Sub. H.B. 1 of the 4  
128th General Assembly regarding the Medicaid 5  
reimbursement rate for estimated acquisition cost 6  
pharmaceuticals, the Medicaid dispensing fee, and 7  
the number of brand name drugs available at one 8  
time under the Medicaid program without prior 9  
authorization. 10

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

**Section 1.** That new sections 5111.07 and 5111.071 and 11  
sections 5111.072 and 5111.085 of the Revised Code be enacted to 12  
read as follows: 13

**Sec. 5111.07.** (A) As used in this section and sections 14  
5111.071 and 5111.072 of the Revised Code: 15

(1) "Pharmacy provider" means a terminal distributor of 16  
dangerous drugs, as defined in section 4729.01 of the Revised 17  
Code, that has all of the following: 18

(a) A valid drug enforcement agency number; 19

<u>(b) A licensed pharmacist in full and actual charge of a</u>	20
<u>pharmacy;</u>	21
<u>(c) A valid medicaid provider agreement.</u>	22
<u>(2) "Prescribed drugs" has the same meaning as in 42 C.F.R.</u>	23
<u>440.120(a).</u>	24
<u>(B) Once every two years, the department of job and family</u>	25
<u>services shall contract with a research organization that is</u>	26
<u>associated with an educational institution for the research</u>	27
<u>organization to perform a survey or assessment of the costs that</u>	28
<u>pharmacy providers incur in dispensing prescribed drugs under the</u>	29
<u>fee-for-service component of the medicaid program. The research</u>	30
<u>organization selected for the contract shall be mutually agreed to</u>	31
<u>by the department and entities that represent pharmacy providers.</u>	32
<u>The contract with a research organization shall require the</u>	33
<u>organization to do all of the following in conducting the survey</u>	34
<u>or assessment:</u>	35
<u>(1) Use a standard template that the department shall develop</u>	36
<u>in consultation with entities that represent pharmacy providers;</u>	37
<u>(2) Use data from a representative sample of pharmacy</u>	38
<u>providers;</u>	39
<u>(3) Determine the average cost per prescription for pharmacy</u>	40
<u>providers to dispense prescribed drugs under the fee-for-service</u>	41
<u>component of the medicaid program by reviewing all of the</u>	42
<u>following pharmacy provider costs:</u>	43
<u>(a) Operational and overhead costs;</u>	44
<u>(b) Costs of providing professional counseling in the course</u>	45
<u>of dispensing prescribed drugs;</u>	46
<u>(c) Salaries and other related administrative costs;</u>	47
<u>(d) All other costs associated with operating a pharmacy and</u>	48
<u>dispensing prescribed drugs under the fee-for-service component,</u>	49

including costs relating to coordination of benefits, bad debt, 50  
uncollected copayments, payment lag times, and rejected claims. 51

(4) If the director of job and family services, under section 52  
5111.071 of the Revised Code, establishes a higher dispensing fee 53  
for generic prescribed drugs than brand name prescribed drugs, 54  
make separate per prescription average cost determinations under 55  
division (B)(3) of this section for dispensing generic prescribed 56  
drugs and dispensing brand name prescribed drugs. 57

**Sec. 5111.071.** Not later than ninety days after the 58  
completion of the initial survey or assessment for which the 59  
department of job and family services contracts under section 60  
5111.07 of the Revised Code, the director of job and family 61  
services shall adopt rules under section 5111.02 of the Revised 62  
Code establishing a dispensing fee for pharmacy providers who 63  
dispense prescribed drugs under the fee-for-service component of 64  
the medicaid program. In establishing the dispensing fee, the 65  
director shall ensure that the dispensing fee equals the average 66  
cost per prescription that pharmacy providers incur in dispensing 67  
prescribed drugs under the fee-for-service component of the 68  
medicaid program as determined by the survey or assessment. The 69  
dispensing fee for generic prescribed drugs may be higher than the 70  
dispensing fee for brand name prescribed drugs. 71

The director shall amend the rules regarding the dispensing 72  
fee not later than ninety days following the completion of each 73  
subsequent survey or assessment for which the department contracts 74  
under section 5111.07 of the Revised Code. The amendments shall 75  
revise the dispensing fee to reflect changes in the average cost 76  
per prescription that pharmacy providers incur in dispensing 77  
prescribed drugs under the fee-for-service component of the 78  
medicaid program as determined by the subsequent survey or 79  
assessment. 80

Sec. 5111.072. A medicaid recipient eligible for the 81  
prescribed drugs benefit under the fee-for-service component of 82  
the medicaid program may obtain up to four brand name prescribed 83  
drugs at one time under the fee-for-service component without 84  
receiving prior authorization. To obtain more than four brand name 85  
prescribed drugs at one time under the fee-for-service component, 86  
the recipient must receive prior authorization from the department 87  
of job and family services or another entity with which the 88  
department contracts to provide prior authorization services. The 89  
director of job and family services shall adopt rules under 90  
section 5111.02 of the Revised Code as necessary to implement this 91  
section. 92

Sec. 5111.085. (A) As used in this section: 93

(1) "Estimated acquisition cost pharmaceutical" means a 94  
prescribed drug, as defined in 42 C.F.R. 440.120(a), that is 95  
covered by the fee-for-service component of the medicaid program 96  
but not included in the state maximum allowable cost program 97  
established under section 5111.082 of the Revised Code. 98

(2) "Pharmacy provider" means a terminal distributor of 99  
dangerous drugs, as defined in section 4729.01 of the Revised 100  
Code, that has all of the following: 101

(a) A valid drug enforcement agency number; 102

(b) A licensed pharmacist in full and actual charge of a 103  
pharmacy; 104

(c) A valid medicaid provider agreement. 105

(3) "Wholesale acquisition cost" has the same meaning as in 106  
42 U.S.C. 1395w-3a(c)(6)(B). 107

(B) The director of job and family services shall revise the 108  
amount that the fee-for-service component of the medicaid program 109

reimburses a pharmacy provider for an estimated acquisition cost 110  
pharmaceutical not later than one business day after the wholesale 111  
acquisition cost for the pharmaceutical is revised. The revision 112  
to the reimbursement rate for the estimated acquisition cost 113  
pharmaceutical shall be based on the full amount of the 114  
pharmaceutical's revised wholesale acquisition cost. 115

**Section 2.** That sections 5111.07 and 5111.071 of the Revised 116  
Code are hereby repealed. 117

**Section 3.** That Section 309.30.76 of Am. Sub. H.B. 1 of the 118  
128th General Assembly is hereby repealed. 119

**Section 4.** Until a Medicaid dispensing fee is established 120  
pursuant to section 5111.071 of the Revised Code, as enacted by 121  
this act, the Medicaid dispensing fee for each noncompounded drug 122  
covered by the fee-for-service component of the Medicaid program 123  
shall be the amount of the dispensing fee in effect on December 124  
31, 2009. 125