133rd General Assembly
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H. B. No. 63

Representatives Lipps, West
Cosponsors: Representatives Smith, R., McClain, Koehler, Hambley, Crossman, Schaffer, Riedel, LaTourette, Scherer, Miranda, Upchurch, Smith, K., Galonski, Greenspan

A BILL

To amend sections 1739.05 and 3959.12 and to enact sections 1751.92, 3923.87, 3959.20, and 4729.47 of the Revised Code regarding pharmacy benefit managers, pharmacists, and the disclosure to patients of drug price information.

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

Section 1. That sections 1739.05 and 3959.12 be amended and sections 1751.92, 3923.87, 3959.20, and 4729.47 of the Revised Code be enacted to read as follows:

Sec. 1739.05. (A) A multiple employer welfare arrangement that is created pursuant to sections 1739.01 to 1739.22 of the Revised Code and that operates a group self-insurance program may be established only if any of the following applies:

(1) The arrangement has and maintains a minimum enrollment of three hundred employees of two or more employers.

(2) The arrangement has and maintains a minimum enrollment of three hundred self-employed individuals.
(3) The arrangement has and maintains a minimum enrollment of three hundred employees or self-employed individuals in any combination of divisions (A)(1) and (2) of this section.

(B) A multiple employer welfare arrangement that is created pursuant to sections 1739.01 to 1739.22 of the Revised Code and that operates a group self-insurance program shall comply with all laws applicable to self-funded programs in this state, including sections 3901.04, 3901.041, 3901.19 to 3901.26, 3901.38, 3901.381 to 3901.3814, 3901.40, 3901.45, 3901.46, 3901.491, 3902.01 to 3902.14, 3923.041, 3923.24, 3923.282, 3923.30, 3923.301, 3923.38, 3923.581, 3923.602, 3923.63, 3923.80, 3923.84, 3923.85, 3923.851, 3923.87, 3924.031, 3924.032, and 3924.27 of the Revised Code.

(C) A multiple employer welfare arrangement created pursuant to sections 1739.01 to 1739.22 of the Revised Code shall solicit enrollments only through agents or solicitors licensed pursuant to Chapter 3905. of the Revised Code to sell or solicit sickness and accident insurance.

(D) A multiple employer welfare arrangement created pursuant to sections 1739.01 to 1739.22 of the Revised Code shall provide benefits only to individuals who are members, employees of members, or the dependents of members or employees, or are eligible for continuation of coverage under section 1751.53 or 3923.38 of the Revised Code or under Title X of the "Consolidated Omnibus Budget Reconciliation Act of 1985," 100 Stat. 227, 29 U.S.C.A. 1161, as amended.

(E) A multiple employer welfare arrangement created pursuant to sections 1739.01 to 1739.22 of the Revised Code is subject to, and shall comply with, sections 3903.81 to 3903.93 of the Revised Code in the same manner as other life or health
insurers, as defined in section 3903.81 of the Revised Code.

Sec. 1751.92. Each health insuring corporation shall comply with the requirements of section 3959.20 of the Revised Code as they pertain to health plan issuers.

As used in this section, "health plan issuer" has the same meaning as in section 3922.01 of the Revised Code.

Sec. 3923.87. Each sickness and accident insurer or public employee benefit plan shall comply with the requirements of section 3959.20 of the Revised Code as they pertain to health plan issuers.

As used in this section, "health plan issuer" has the same meaning as in section 3922.01 of the Revised Code.

Sec. 3959.12. (A) Any license issued under sections 3959.01 to 3959.16 of the Revised Code may be suspended for a period not to exceed two years, revoked, or not renewed by the superintendent of insurance after notice to the licensee and hearing in accordance with Chapter 119. of the Revised Code. The superintendent may suspend, revoke, or refuse to renew a license if upon investigation and proof the superintendent finds that the licensee has done any of the following:

(1) Knowingly violated any provision of sections 3959.01 to 3959.16 or 3959.20 of the Revised Code or any rule promulgated by the superintendent;

(2) Knowingly made a material misstatement in the application for the license;

(3) Obtained or attempted to obtain a license through misrepresentation or fraud;

(4) Misappropriated or converted to the licensee's own use
or improperly withheld insurance company premiums or contributions held in a fiduciary capacity, excluding, however, any interest earnings received by the administrator as disclosed in writing by the administrator to the plan sponsor;

(5) In the transaction of business under the license, used fraudulent, coercive, or dishonest practices;

(6) Failed to appear without reasonable cause or excuse in response to a subpoena, examination, warrant, or other order lawfully issued by the superintendent;

(7) Is affiliated with or under the same general management or interlocking directorate or ownership of another administrator that transacts business in this state and is not licensed under sections 3959.01 to 3959.16 of the Revised Code;

(8) Had a license suspended, revoked, or not renewed in any other state, district, territory, or province on grounds identical to those stated in sections 3959.01 to 3959.16 of the Revised Code;

(9) Been convicted of a financially related felony;

(10) Failed to report a felony conviction as required under section 3959.13 of the Revised Code.

Upon receipt of notice of the order of suspension in accordance with section 119.07 of the Revised Code, the licensee shall promptly deliver the license to the superintendent, unless the order of suspension is appealed under section 119.12 of the Revised Code.

Any person whose license is revoked or whose application is denied pursuant to sections 3959.01 to 3959.16 of the Revised Code is ineligible to apply for an administrators
license for two years.

(D) The superintendent may impose a monetary fine against a licensee if, upon investigation and after notice and opportunity for hearing in accordance with Chapter 119. of the Revised Code, the superintendent finds that the licensee has done either of the following:

(1) Committed fraud or engaged in any illegal or dishonest activity in connection with the administration of pharmacy benefit management services;

(2) Violated any provision of section 3959.111 of the Revised Code or any rule adopted by the superintendent pursuant to or to implement that section.

Sec. 3959.20. (A) As used in this section:

(1) "Cost-sharing" means the cost to an individual insured under a health benefit plan according to any coverage limit, copayment, coinsurance, deductible, or other out-of-pocket expense requirements imposed by the plan.

(2) "Health benefit plan" and "health plan issuer" have the same meanings as in section 3922.01 of the Revised Code.

(3) "Pharmacy audit" has the same meaning as in section 3901.81 of the Revised Code.

(4) "Pharmacy benefit manager" and "administrator" have the same meanings as in section 3959.01 of the Revised Code.

(B) No health plan issuer, pharmacy benefit manager, or any other administrator shall require cost-sharing in an amount, or direct a pharmacy to collect cost-sharing in an amount, greater than the lesser of either of the following from an individual purchasing a prescription drug:
(1) The amount an individual would pay for the drug if the drug were to be purchased without coverage under a health benefit plan;

(2) The net reimbursement paid to the pharmacy for the prescription drug by the health plan issuer, pharmacy benefit manager, or administrator.

(C)(1) No health plan issuer, pharmacy benefit manager, or administrator shall retroactively adjust a pharmacy claim for reimbursement for a prescription drug unless the adjustment is the result of either of the following:

(a) A pharmacy audit conducted in accordance with sections 3901.811 to 3901.814 of the Revised Code;

(b) A technical billing error.

(2) No health plan issuer, pharmacy benefit manager, or administrator shall charge a fee related to a claim unless the amount of the fee can be determined at the time of claim adjudication.

(D) The department of insurance shall create a web form that consumers can use to submit complaints relating to violations of this section.

Sec. 4729.47. When filling a prescription, if a pharmacist, pharmacy intern, or terminal distributor of dangerous drugs has information indicating that the cost-sharing amount required by the patient's health benefit plan exceeds the amount that may otherwise be charged for the same drug, both of the following apply:

(A) The pharmacist, pharmacy intern, or terminal distributor shall provide this information to the patient.
(B) The patient shall not be charged the higher amount.

**Section 2.** That existing sections 1739.05 and 3959.12 of the Revised Code are hereby repealed.

**Section 3.** Section 3959.20 of the Revised Code as enacted by this act applies to contracts for pharmacy services and to health benefit plans, as defined in section 3922.01 of the Revised Code, entered into or amended on or after the effective date of this act.

**Section 4.** Section 1739.05 of the Revised Code is presented in this act as a composite of the section as amended by both Sub. H.B. 463 and Sub. S.B. 319 of the 131st General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.