As Reported by the Senate Insurance and Financial Institutions Committee

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Senator Huffman, M.

Cosponsors: Senators Terhar, Roegner, Eklund, Brenner, Hottinger

A BILL

To amend section 3904.13 and to enact section 3901.89 of the Revised Code to require health plan issuers to release certain claim information to group plan policyholders.

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

Section 1. That section 3904.13 be amended and section 3901.89 of the Revised Code be enacted to read as follows:

Sec. 3901.89. (A) As used in this section:

(1) "Full-time employee" means an employee working an average of at least thirty hours of service per week during a calendar month, or at least one hundred thirty hours of service during the calendar month.

(2) "Group policyholder" means a policyholder for a health insurance policy covering fifty or more full-time employees. "Group policyholder" includes an authorized representative of a group policyholder.

(3) "Health plan issuer" has the same meaning as in

section 3922.01 of the Revised Code.

(B)(1)(a) A health plan issuer shall, upon request, release to each group policyholder monthly claims data and shall provide this data within thirty business days of receipt of the request.

(b) A health plan issuer shall not be required to release claims information as required in division (B)(1)(a) of this section more than once per calendar year per group policyholder.

(2) The data released shall include all of the following with regard to the policy in question for the policy period immediately preceding or the current policy period, as requested by the policyholder:

(a) The net claims paid or incurred by month;

(b)(i) If the group policyholder is an employer, the monthly enrollment data by employee only, employee and spouse, and employee and family;

(ii) If the group policyholder is not an employer, the monthly enrollment data shall be provided and organized in a relevant manner.

(c) Monthly prescription claims information;

(d) Paid claims over thirty thousand dollars, including claim identifier other than name and the date of occurrence, the amount paid toward each claim, and claimant health condition or diagnosis.

(C) A health plan issuer that discloses data or information in compliance with division (B) of this section may condition any such disclosure upon the execution of an agreement with the policyholder absolving the health plan issuer from

civil liability related to the use of such data or information.

(D) A health plan issuer that provides data or information in compliance with division (B) of this section shall be immune from civil liability for any acts or omissions of any person's subsequent use of such data or information.

(E) This section shall not be construed as authorizing the disclosure of the identity of a particular individual covered under the group policy, nor the disclosure of any covered individual's particular health insurance claim, condition, or diagnosis, which would violate federal or state law.

(F) A group policyholder is entitled to receive protected health information under this section only after an appropriately authorized representative of the group policyholder makes to the health plan issuer a certification substantially similar to the following:

"I hereby certify and have demonstrated that the plan documents comply with the requirements of 45 C.F.R. 164.504(f)(2) and that the group policyholder will safeguard and limit the use and disclosure of protected health information that the policyholder may receive from the group health plan to perform plan administration functions."

(G) A group policyholder that does not provide the certification required in division (F) of this section is not entitled to receive the protected health information described in division (B)(2)(d) of this section, but is entitled to receive a report of claim information that includes the other information described under division (B) of this section.

(H) Committing a series of violations of this section that, taken together, constitute a practice or pattern shall be

considered an unfair or deceptive practice under sections 3901.19 to 3901.26 of the Revised Code.

(I) Nothing in this section shall be construed as prohibiting a health plan issuer from disclosing additional claims information beyond what is required by this section.

Sec. 3904.13. No insurance institution, agent, or insurance support organization shall disclose any personal or privileged information about an individual collected or received in connection with an insurance transaction, unless the disclosure is made pursuant to any of the following:

(A) With the written authorization of the individual, provided:

(1) If such authorization is submitted by another insurance institution, agent, or insurance support organization, the authorization meets the requirements of section 3904.06 of the Revised Code;

(2) If such authorization is submitted by a person other than an insurance institution, agent, or insurance support organization, the authorization is dated, signed by the individual, and obtained one year or less prior to the date a disclosure is sought under this division.

(B) To a person other than an insurance institution, agent, or insurance support organization, provided such disclosure is reasonably necessary for the following reasons:

(1) To enable such person to perform a business, professional, or insurance function for the disclosing insurance institution, agent, or insurance support organization, and such person agrees not to disclose the information further without the individual's written authorization unless the further

disclosure either:

(a) Would otherwise be permitted by this section if made by an insurance institution, agent, or insurance support organization;

(b) Is reasonably necessary for such person to perform ~~its~~ the person's function for the disclosing insurance institution, agent, or insurance support organization.

(2) To enable such person to provide information to the disclosing insurance institution, agent, or insurance support organization for the purpose of either:

(a) Determining an individual's eligibility for an insurance benefit or payment;

(b) Detecting or preventing criminal activity, fraud, material misrepresentation, or material nondisclosure in connection with an insurance transaction.

(C) To an insurance institution, agent, insurance support organization, or self-insurer, provided the information disclosed is limited to that which is reasonably necessary either:

(1) To detect or prevent criminal activity, fraud, material misrepresentation, or material nondisclosure in connection with insurance transactions;

(2) For either the disclosing or receiving insurance institution, agent, or insurance support organization to perform its function in connection with an insurance transaction involving the individual.

(D) To a medical care institution or medical professional for the purpose of verifying insurance coverage or benefits,

informing an individual of a medical problem of which the individual may not be aware, or conducting an operations or services audit to verify the individuals treated by the medical professional or at the medical care institution. However, only such information may be disclosed as is reasonably necessary to accomplish any of the purposes set forth in this division.

(E) To an insurance regulatory authority;

(F) To a law enforcement or other governmental authority to protect the interests of the insurance institution, agent, or insurance support organization in preventing or prosecuting the perpetration of fraud upon it; or if the insurance institution, agent or insurance support organization reasonably believes that illegal activities have been conducted by the individual;

(G) As otherwise permitted or required by law;

(H) In response to a facially valid administrative or judicial order, including a search warrant or subpoena;

(I) Made for the purpose of conducting actuarial or research studies, provided the following conditions are met:

(1) No individual may be identified in any actuarial or research report;

(2) Materials allowing the individual to be identified are returned or destroyed as soon as they are no longer needed;

(3) The actuarial or research organization agrees not to disclose the information unless the disclosure would otherwise be permitted by this section if made by an insurance institution, agent, or insurance support organization.

(J) To a party or representative of a party to a proposed or consummated sale, transfer, merger, or consolidation of all

or part of the business of the insurance institution, agent, or insurance support organization, provided the following conditions are met:

(1) Prior to the consummation of the sale, transfer, merger, or consolidation, only such information is disclosed as is reasonably necessary to enable the recipient to make business decisions about the purchase, transfer, merger, or consolidation;

(2) The recipient agrees not to disclose the information, unless the disclosure would otherwise be permitted by this section if made by an insurance institution, agent, or insurance support organization.

(K) To a person whose only use of such information will be in connection with the marketing of a product or service, provided the following conditions are met:

(1) No medical record information, privileged information, or personal information relating to an individual's character, personal habits, mode of living, or general reputation is disclosed, and no classification derived from such information is disclosed;

(2) The individual has been given an opportunity to indicate that ~~he~~ the individual does not want personal information disclosed for marketing purposes and has given no indication that ~~he~~ the individual does not want the information disclosed;

(3) The person receiving such information agrees not to use it except in connection with the marketing of a product or service.

(L) To an affiliate whose only use of the information will

be in connection with an audit of the insurance institution or agent or the marketing of an insurance product or service, provided the affiliate agrees not to disclose the information for any other purpose or to unaffiliated persons;

(M) By a consumer reporting agency, provided the disclosure is to a person other than an insurance institution or agent;

(N) To a group policyholder for the purpose of reporting claims experience or conducting an audit of the insurance institution's or agent's operations or services, provided the information disclosed is reasonably necessary for the group policyholder to conduct the review or audit;

(O) To a group policyholder as provided in section 3901.89 of the Revised Code;

(P) To a professional peer review organization for the purpose of reviewing the service or conduct of a medical care institution or medical professional;

~~(P)~~ (Q) To a governmental authority for the purpose of determining the individual's eligibility for health benefits for which the governmental authority may be liable;

~~(Q)~~ (R) To a certificate holder or policyholder for the purpose of providing information regarding the status of an insurance transaction;

~~(R)~~ (S) To a lienholder, mortgagee, assignee, lessor, or other person shown on the records of an insurance institution or agent as having a legal or beneficial interest in a policy of insurance, provided the following conditions are met:

(1) No medical record information is disclosed unless the

disclosure would otherwise be permitted by this section;

(2) The information disclosed is limited to that which is reasonably necessary to permit such person to protect its interests in such policy.

Section 2. That existing section 3904.13 of the Revised Code is hereby repealed.

Section 3. Sections 1 and 2 of this act take effect July 1, 2020.