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# OHIO LEGISLATIVE SERVICE COMMISSION

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H.B. 63  
133rd General Assembly

## Bill Analysis

**Version:** As Introduced

**Primary Sponsors:** Reps. Lipps and West

Yosef Schiff, Attorney

### Summary

- Prohibits health plan issuers and third party administrators from requiring or directing pharmacies to collect cost-sharing beyond a certain amount from individuals purchasing prescription drugs.
- Prohibits issuers and administrators from retroactively adjusting pharmacy claims other than as a result of a technical billing error or a pharmacy audit.
- Prohibits issuers and administrators from charging claim-related fees unless those fees can be determined at the time of claim adjudication.
- Requires pharmacists, pharmacy interns, and terminal distributors of dangerous drugs to inform patients if the cost-sharing required by the patient's plan exceeds the amount that may otherwise be charged and prohibits those persons from charging patients the higher amount.
- Provides for license or certificate of authority suspension or revocation and monetary penalties for failure to comply with the bill.
- Requires the Department of Insurance to create a web form for consumers to submit complaints relating to violations of the bill.

### Detailed Analysis

#### Cost-sharing limit

The bill prohibits a health plan issuer, a term that includes pharmacy benefit managers and other third-party administrators, from requiring cost-sharing in an amount greater than the lesser of the following from an individual purchasing a prescription drug:

- The amount an individual would pay if the drug were purchased without coverage under a health benefit plan;
- The net reimbursement paid to the pharmacy by the health plan issuer.

Under the bill, a health plan issuer also is prohibited from directing a pharmacy to collect cost-sharing in an amount greater than the lesser of those amounts in relation to prescription drugs.<sup>1</sup>

The following table describes how this requirement might work in practice for a health benefit plan having default cost-sharing in the form of a copay of \$10 (amounts are for illustrative purposes only):

| Health benefit plan default contractual copay | Pharmacy's net reimbursement for drug | "Without insurance" price for drug | Maximum amount patient would be required to pay for drug |
|---|---------------------------------------|------------------------------------|--|
| \$10  | \$200                                 | \$300                              | \$10   |
| \$10  | \$8                                   | \$2                                | \$2  |
| \$10  | \$4                                   | \$6                                | \$4  |

## Prohibited adjustments and fees

The bill prohibits a health plan issuer from retroactively adjusting a pharmacy claim for reimbursement for a prescription drug unless the adjustment resulted from either a technical billing error or a pharmacy audit.<sup>2</sup>

Also, under the bill, a health plan issuer is prohibited from charging a fee related to a claim unless the amount of the fee can be determined at the time of claim adjudication.<sup>3</sup>

## Duties of pharmacists, pharmacy interns, and terminal distributors

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, this person must inform the patient of this fact and the patient must not be charged the higher amount.<sup>4</sup>

## Enforcement

### Health plan issuers

The bill provides that if a pharmacy benefit manager or other administrator knowingly violates its provisions, its license may be suspended for a period not to exceed two years, revoked, or not renewed by the Superintendent.

<sup>1</sup> R.C. 3959.20(A)(1) and (B) and R.C. 1739.05, 1751.92, 3923.87, and 3959.12.

<sup>2</sup> R.C. 3959.20(C) and R.C. 1739.05, 1751.92, 3923.87, and 3959.12.

<sup>3</sup> R.C. 3959.20(C) and R.C. 1739.05, 1751.92, 3923.87, and 3959.12.

<sup>4</sup> R.C. 4729.47.

If a health insuring corporation or a multiple employer welfare arrangement fails to comply with the bill's provisions, the Superintendent may suspend or revoke its certificate of authority.

It appears that if a sickness and accident insurer or, possibly, public employee benefit plan, fails to comply with the bill, the insurer or plan would be subject to a forfeiture of \$1,000 to \$10,000.<sup>5</sup> (See **Comment**.)

### **Pharmacists, pharmacy interns, and terminal distributors**

If a pharmacist or pharmacy intern violates the bill's provisions, the State Board of Pharmacy may take any of the following actions against that individual:

- Revoke, suspend, restrict, limit, or refuse to grant or renew a license;
- Reprimand or place the license holder on probation; or
- Impose a monetary penalty or forfeiture not to exceed \$500.<sup>6</sup>

If a terminal distributor of dangerous drugs violates the bill's provisions, the State Board of Pharmacy may take any of the same actions against the distributor as it may take against a pharmacist or pharmacy intern, except that a monetary penalty or forfeiture may not exceed \$1,000.<sup>7</sup>

### **Web-based complaint form**

The bill requires the Department of Insurance to create a web form that consumers can use to submit complaints relating to violations of the bill.<sup>8</sup>

### **Affected plans**

The bill's requirements apply to contracts for pharmacy services and to health benefit plans entered into or amended on or after the bill's effective date.<sup>9</sup>

### **Definitions**

The bill uses the following definitions:

**“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.

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<sup>5</sup> R.C. 3959.12(A)(1); R.C. 1739.04(C)(1), not in the bill, 1751.35(A)(12), not in the bill, and 3901.16, not in the bill.

<sup>6</sup> R.C. 4729.16(A)(1) and (A)(2)(e), not in the bill.

<sup>7</sup> R.C. 4729.57(A) and (B)(3), not in the bill.

<sup>8</sup> R.C. 3959.20(D).

<sup>9</sup> Section 3 of the bill.

**“Health benefit plan”** means, subject to certain exceptions, a policy, contract, certificate, or agreement offered by a health plan issuer to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services.<sup>10</sup>

**“Health plan issuer”** means an entity subject to the Ohio Insurance Laws and rules, or subject to the jurisdiction of the Superintendent of Insurance, that contracts, or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services under a health benefit plan. “Health plan issuer” includes health insuring corporations, sickness and accident insurers, public employee benefit plans, self-funded multiple employer welfare arrangements, and third-party administrators such as pharmacy benefit managers.<sup>11</sup>

**“Pharmacy benefit manager”** means an entity that contracts with pharmacies on behalf of an employer, a multiple employer welfare arrangement, public employee benefit plan, state agency, insurer, managed care organization, or other third-party payer to provide pharmacy health benefit services or administration.<sup>12</sup>

**“Administrator”** means any person who adjusts or settles claims on Ohio residents in connection with life, dental, health, prescription drugs, or disability insurance or self-insurance programs. The term includes a pharmacy benefit manager.<sup>13</sup>

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## Comment

The Insurance Law contains a catchall penalty that requires, in the absence of any other penalty, an association, company, or corporation to forfeit and pay not less than \$1,000 nor more than \$10,000 to the Superintendent of Insurance for violating any law relating to the Superintendent or any Insurance Law.<sup>14</sup> It appears that R.C. 3923.87, enacted by the bill, would constitute an Insurance Law. But, it is uncertain whether this provision applies to public employee benefit plans.

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## History

| Action     | Date     |
|------------|----------|
| Introduced | 02-12-19 |

H0063-I-133/ar

<sup>10</sup> R.C. 3959.20(A)(2); R.C. 3922.01, not in the bill.

<sup>11</sup> R.C. 1751.92, 3923.87, and 3959.20(A)(2); R.C. 3922.01 and 3959.01, not in the bill.

<sup>12</sup> R.C. 3959.20(A)(4); R.C. 3959.01, not in the bill.

<sup>13</sup> R.C. 3959.20(A)(4); R.C. 3959.01, not in the bill.

<sup>14</sup> R.C. 3901.16, not in the bill.