

As Reported by the House Insurance Committee

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Sub. S. B. No. 9

Senator Huffman, M.

Cosponsors: Senators Terhar, Roegner, Eklund, Brenner, Hottinger, Antonio, Burke, Coley, Craig, Dolan, Gavarone, Hackett, Hill, Hoagland, Kunze, Lehner, Maharath, Manning, McColley, Obhof, O'Brien, Peterson, Rulli, Schuring, Thomas, Wilson, Yuko Representative Antani

A BILL

To amend sections 3904.13 and 4125.03 and to enact
section 3901.89 of the Revised Code to require
health plan issuers to release certain claim
information to group plan policyholders and to
allow a professional employer organization to
file federal payroll taxes entirely under a
client employer's tax identification number.

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

Section 1. That sections 3904.13 and 4125.03 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. 16
"Group policyholder" includes an authorized representative of a group policyholder. 17
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(3) "Health plan issuer" has the same meaning as in section 3922.01 of the Revised Code. 20
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(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. 22
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(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. 26
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(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: 29
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(a) The net claims paid or incurred by month; 33

(b) (i) If the group policyholder is an employer, the monthly enrollment data by employee only, employee and spouse, and employee and family; 34
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(ii) If the group policyholder is not an employer, the monthly enrollment data shall be provided and organized in a relevant manner. 37
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(c) Monthly prescription claims information; 40

(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 41
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diagnosis. 44

(C) A health plan issuer that discloses data or 45
information in compliance with division (B) of this section may 46
condition any such disclosure upon the execution of an agreement 47
with the policyholder absolving the health plan issuer from 48
civil liability related to the use of such data or information. 49

(D) A health plan issuer that provides data or information 50
in compliance with division (B) of this section shall be immune 51
from civil liability for any acts or omissions of any person's 52
subsequent use of such data or information. 53

(E) This section shall not be construed as authorizing the 54
disclosure of the identity of a particular individual covered 55
under the group policy, nor the disclosure of any covered 56
individual's particular health insurance claim, condition, or 57
diagnosis, which would violate federal or state law. 58

(F) A group policyholder is entitled to receive protected 59
health information under this section only after an 60
appropriately authorized representative of the group 61
policyholder makes to the health plan issuer a certification 62
substantially similar to the following: 63

"I hereby certify and have demonstrated that the plan 64
documents comply with the requirements of 45 C.F.R. 164.504(f) 65
(2) and that the group policyholder will safeguard and limit the 66
use and disclosure of protected health information that the 67
policyholder may receive from the group health plan to perform 68
plan administration functions." 69

(G) A group policyholder that does not provide the 70
certification required in division (F) of this section is not 71
entitled to receive the protected health information described 72

in division (B) (2) (d) of this section, but is entitled to 73
receive a report of claim information that includes the other 74
information described under division (B) of this section. 75

(H) Committing a series of violations of this section 76
that, taken together, constitute a practice or pattern shall be 77
considered an unfair or deceptive practice under sections 78
3901.19 to 3901.26 of the Revised Code. 79

(I) Nothing in this section shall be construed as 80
prohibiting a health plan issuer from disclosing additional 81
claims information beyond what is required by this section. 82

Sec. 3904.13. No insurance institution, agent, or 83
insurance support organization shall disclose any personal or 84
privileged information about an individual collected or received 85
in connection with an insurance transaction, unless the 86
disclosure is made pursuant to any of the following: 87

(A) With the written authorization of the individual, 88
provided: 89

(1) If such authorization is submitted by another 90
insurance institution, agent, or insurance support organization, 91
the authorization meets the requirements of section 3904.06 of 92
the Revised Code; 93

(2) If such authorization is submitted by a person other 94
than an insurance institution, agent, or insurance support 95
organization, the authorization is dated, signed by the 96
individual, and obtained one year or less prior to the date a 97
disclosure is sought under this division. 98

(B) To a person other than an insurance institution, 99
agent, or insurance support organization, provided such 100
disclosure is reasonably necessary for the following reasons: 101

(1) To enable such person to perform a business, 102
professional, or insurance function for the disclosing insurance 103
institution, agent, or insurance support organization, and such 104
person agrees not to disclose the information further without 105
the individual's written authorization unless the further 106
disclosure either: 107

(a) Would otherwise be permitted by this section if made 108
by an insurance institution, agent, or insurance support 109
organization; 110

(b) Is reasonably necessary for such person to perform ~~its~~ 111
the person's function for the disclosing insurance institution, 112
agent, or insurance support organization. 113

(2) To enable such person to provide information to the 114
disclosing insurance institution, agent, or insurance support 115
organization for the purpose of either: 116

(a) Determining an individual's eligibility for an 117
insurance benefit or payment; 118

(b) Detecting or preventing criminal activity, fraud, 119
material misrepresentation, or material nondisclosure in 120
connection with an insurance transaction. 121

(C) To an insurance institution, agent, insurance support 122
organization, or self-insurer, provided the information 123
disclosed is limited to that which is reasonably necessary 124
either: 125

(1) To detect or prevent criminal activity, fraud, 126
material misrepresentation, or material nondisclosure in 127
connection with insurance transactions; 128

(2) For either the disclosing or receiving insurance 129

institution, agent, or insurance support organization to perform 130
its function in connection with an insurance transaction 131
involving the individual. 132

(D) To a medical care institution or medical professional 133
for the purpose of verifying insurance coverage or benefits, 134
informing an individual of a medical problem of which the 135
individual may not be aware, or conducting an operations or 136
services audit to verify the individuals treated by the medical 137
professional or at the medical care institution. However, only 138
such information may be disclosed as is reasonably necessary to 139
accomplish any of the purposes set forth in this division. 140

(E) To an insurance regulatory authority; 141

(F) To a law enforcement or other governmental authority 142
to protect the interests of the insurance institution, agent, or 143
insurance support organization in preventing or prosecuting the 144
perpetration of fraud upon it; or if the insurance institution, 145
agent or insurance support organization reasonably believes that 146
illegal activities have been conducted by the individual; 147

(G) As otherwise permitted or required by law; 148

(H) In response to a facially valid administrative or 149
judicial order, including a search warrant or subpoena; 150

(I) Made for the purpose of conducting actuarial or 151
research studies, provided the following conditions are met: 152

(1) No individual may be identified in any actuarial or 153
research report; 154

(2) Materials allowing the individual to be identified are 155
returned or destroyed as soon as they are no longer needed; 156

(3) The actuarial or research organization agrees not to 157

disclose the information unless the disclosure would otherwise 158
be permitted by this section if made by an insurance 159
institution, agent, or insurance support organization. 160

(J) To a party or representative of a party to a proposed 161
or consummated sale, transfer, merger, or consolidation of all 162
or part of the business of the insurance institution, agent, or 163
insurance support organization, provided the following 164
conditions are met: 165

(1) Prior to the consummation of the sale, transfer, 166
merger, or consolidation, only such information is disclosed as 167
is reasonably necessary to enable the recipient to make business 168
decisions about the purchase, transfer, merger, or 169
consolidation; 170

(2) The recipient agrees not to disclose the information, 171
unless the disclosure would otherwise be permitted by this 172
section if made by an insurance institution, agent, or insurance 173
support organization. 174

(K) To a person whose only use of such information will be 175
in connection with the marketing of a product or service, 176
provided the following conditions are met: 177

(1) No medical record information, privileged information, 178
or personal information relating to an individual's character, 179
personal habits, mode of living, or general reputation is 180
disclosed, and no classification derived from such information 181
is disclosed; 182

(2) The individual has been given an opportunity to 183
indicate that ~~he~~ the individual does not want personal 184
information disclosed for marketing purposes and has given no 185
indication that ~~he~~ the individual does not want the information 186

disclosed;	187
(3) The person receiving such information agrees not to use it except in connection with the marketing of a product or service.	188 189 190
(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;	191 192 193 194 195
(M) By a consumer reporting agency, provided the disclosure is to a person other than an insurance institution or agent;	196 197 198
(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;	199 200 201 202 203
(O) <u>To a group policyholder as provided in section 3901.89 of the Revised Code;</u>	204 205
<u>(P)</u> To a professional peer review organization for the purpose of reviewing the service or conduct of a medical care institution or medical professional;	206 207 208
(P) <u>(Q)</u> To a governmental authority for the purpose of determining the individual's eligibility for health benefits for which the governmental authority may be liable;	209 210 211
(Q) <u>(R)</u> To a certificate holder or policyholder for the purpose of providing information regarding the status of an insurance transaction;	212 213 214

~~(R)~~ (S) To a lienholder, mortgagee, assignee, lessor, or 215
other person shown on the records of an insurance institution or 216
agent as having a legal or beneficial interest in a policy of 217
insurance, provided the following conditions are met: 218

(1) No medical record information is disclosed unless the 219
disclosure would otherwise be permitted by this section; 220

(2) The information disclosed is limited to that which is 221
reasonably necessary to permit such person to protect its 222
interests in such policy. 223

Sec. 4125.03. (A) The professional employer organization 224
with whom a shared employee is coemployed shall do all of the 225
following: 226

(1) Pay wages associated with a shared employee pursuant 227
to the terms and conditions of compensation in the professional 228
employer organization agreement between the professional 229
employer organization and the client employer; 230

(2) Pay all related payroll taxes associated with a shared 231
employee independent of the terms and conditions contained in 232
the professional employer organization agreement between the 233
professional employer organization and the client employer; 234

(3) Maintain workers' compensation coverage, pay all 235
workers' compensation premiums and manage all workers' 236
compensation claims, filings, and related procedures associated 237
with a shared employee in compliance with Chapters 4121. and 238
4123. of the Revised Code, except that when shared employees 239
include family farm officers, ordained ministers, or corporate 240
officers of the client employer, payroll reports shall include 241
the entire amount of payroll associated with those persons; 242

(4) Provide written notice to each shared employee it 243

assigns to perform services to a client employer of the	244
relationship between and the responsibilities of the	245
professional employer organization and the client employer;	246
(5) Maintain complete records separately listing the	247
manual classifications of each client employer and the payroll	248
reported to each manual classification for each client employer	249
for each payroll reporting period during the time period covered	250
in the professional employer organization agreement;	251
(6) Maintain a record of workers' compensation claims for	252
each client employer;	253
(7) Make periodic reports, as determined by the	254
administrator of workers' compensation, of client employers and	255
total workforce to the administrator;	256
(8) Report individual client employer payroll, claims, and	257
classification data under a separate and unique subaccount to	258
the administrator;	259
(9) Within fourteen days after receiving notice from the	260
bureau of workers' compensation that a refund or rebate will be	261
applied to workers' compensation premiums, provide a copy of	262
that notice to any client employer to whom that notice is	263
relevant.	264
(B) The professional employer organization with whom a	265
shared employee is coemployed shall provide a list of all of the	266
following information to the client employer upon the written	267
request of the client employer:	268
(1) All workers' compensation claims, premiums, and	269
payroll associated with that client employer;	270
(2) Compensation and benefits paid and reserves	271

established for each claim listed under division (B) (1) of this section;	272 273
(3) Any other information available to the professional employer organization from the bureau of workers' compensation regarding that client employer.	274 275 276
(C) (1) A professional employer organization shall provide the information required under division (B) of this section in writing to the requesting client employer within forty-five days after receiving a written request from the client employer.	277 278 279 280
(2) For purposes of division (C) of this section, a professional employer organization has provided the required information to the client employer when the information is received by the United States postal service or when the information is personally delivered, in writing, directly to the client employer.	281 282 283 284 285 286
(D) Except as provided in section 4125.08 of the Revised Code and unless otherwise agreed to in the professional employer organization agreement, the professional employer organization with whom a shared employee is coemployed has a right of direction and control over each shared employee assigned to a client employer's location. However, a client employer shall retain sufficient direction and control over a shared employee as is necessary to do any of the following:	287 288 289 290 291 292 293 294
(1) Conduct the client employer's business, including training and supervising shared employees;	295 296
(2) Ensure the quality, adequacy, and safety of the goods or services produced or sold in the client employer's business;	297 298
(3) Discharge any fiduciary responsibility that the client employer may have;	299 300

(4) Comply with any applicable licensure, regulatory, or 301
statutory requirement of the client employer. 302

(E) Unless otherwise agreed to in the professional 303
employer organization agreement, liability for acts, errors, and 304
omissions shall be determined as follows: 305

(1) A professional employer organization shall not be 306
liable for the acts, errors, and omissions of a client employer 307
or a shared employee when those acts, errors, and omissions 308
occur under the direction and control of the client employer. 309

(2) A client employer shall not be liable for the acts, 310
errors, and omissions of a professional employer organization or 311
a shared employee when those acts, errors, and omissions occur 312
under the direction and control of the professional employer 313
organization. 314

(F) Nothing in divisions (D) and (E) of this section shall 315
be construed to limit any liability or obligation specifically 316
agreed to in the professional employer organization agreement. 317

(G) A professional employer organization may elect to file 318
federal payroll taxes entirely under the tax identification 319
number of the professional employer organization or entirely 320
under the tax identification number of each client employer. All 321
of the following apply to a professional employer organization 322
that elects to file federal payroll taxes entirely under the tax 323
identification number of each client employer: 324

(1) The professional employer organization shall remain 325
liable for all wages and payroll taxes associated with shared 326
employees, regardless of whether the professional employer 327
organization receives payment from the client employer. 328

(2) The professional employer organization shall include 329

in the professional employer organization agreement between the 330
professional employer organization and each client employer a 331
provision that reflects the professional employer organization's 332
liability under division (G)(1) of this section. 333

(3) The professional employer organization is prohibited 334
from arguing in any forum that the use of a client employer's 335
tax identification number absolves the professional employer 336
organization of liability for wages and payroll taxes associated 337
with shared employees of the client employer. 338

Section 2. That existing sections 3904.13 and 4125.03 of 339
the Revised Code are hereby repealed. 340

Section 3. Section 3904.13 of the Revised Code, as amended 341
by this act, and section 3901.89 of the Revised Code, as enacted 342
by this act, take effect July 1, 2020. 343