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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 Representatives Antani, Cupp, Dean, DeVitis, Edwards, Fraizer, Grendell, Hambley, Holmes, A., Patton, Perales, Reineke, Riedel, Roemer, Romanchuk, Scherer, Seitz, Stoltzfus, Wiggam

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. 15

(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 41

claim identifier other than name and the date of occurrence, the 42
amount paid toward each claim, and claimant health condition or 43
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
<u>the person's</u> 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 disclose the information unless the disclosure would otherwise be permitted by this section if made by an insurance institution, agent, or insurance support organization.	157 158 159 160
(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:	161 162 163 164 165
(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;	166 167 168 169 170
(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.	171 172 173 174
(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:	175 176 177
(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;	178 179 180 181 182
(2) The individual has been given an opportunity to indicate that he <u>the individual</u> does not want personal	183 184

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 188
use it except in connection with the marketing of a product or 189
service. 190

(L) To an affiliate whose only use of the information will 191
be in connection with an audit of the insurance institution or 192
agent or the marketing of an insurance product or service, 193
provided the affiliate agrees not to disclose the information 194
for any other purpose or to unaffiliated persons; 195

(M) By a consumer reporting agency, provided the 196
disclosure is to a person other than an insurance institution or 197
agent; 198

(N) To a group policyholder for the purpose of reporting 199
claims experience or conducting an audit of the insurance 200
institution's or agent's operations or services, provided the 201
information disclosed is reasonably necessary for the group 202
policyholder to conduct the review or audit; 203

(O) To a group policyholder as provided in section 3901.89 204
of the Revised Code; 205

(P) To a professional peer review organization for the 206
purpose of reviewing the service or conduct of a medical care 207
institution or medical professional; 208

~~(P)~~ (Q) To a governmental authority for the purpose of 209
determining the individual's eligibility for health benefits for 210
which the governmental authority may be liable; 211

~~(Q)~~ (R) To a certificate holder or policyholder for the 212

purpose of providing information regarding the status of an	213
insurance transaction;	214
(R) <u>(S)</u> 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	272
section;	273
(3) Any other information available to the professional	274
employer organization from the bureau of workers' compensation	275
regarding that client employer.	276
(C) (1) A professional employer organization shall provide	277
the information required under division (B) of this section in	278
writing to the requesting client employer within forty-five days	279
after receiving a written request from the client employer.	280
(2) For purposes of division (C) of this section, a	281
professional employer organization has provided the required	282
information to the client employer when the information is	283
received by the United States postal service or when the	284
information is personally delivered, in writing, directly to the	285
client employer.	286
(D) Except as provided in section 4125.08 of the Revised	287
Code and unless otherwise agreed to in the professional employer	288
organization agreement, the professional employer organization	289
with whom a shared employee is coemployed has a right of	290
direction and control over each shared employee assigned to a	291
client employer's location. However, a client employer shall	292
retain sufficient direction and control over a shared employee	293
as is necessary to do any of the following:	294
(1) Conduct the client employer's business, including	295
training and supervising shared employees;	296
(2) Ensure the quality, adequacy, and safety of the goods	297
or services produced or sold in the client employer's business;	298

(3) Discharge any fiduciary responsibility that the client employer may have;	299 300
(4) Comply with any applicable licensure, regulatory, or statutory requirement of the client employer.	301 302
(E) Unless otherwise agreed to in the professional employer organization agreement, liability for acts, errors, and omissions shall be determined as follows:	303 304 305
(1) A professional employer organization shall not be liable for the acts, errors, and omissions of a client employer or a shared employee when those acts, errors, and omissions occur under the direction and control of the client employer.	306 307 308 309
(2) A client employer shall not be liable for the acts, errors, and omissions of a professional employer organization or a shared employee when those acts, errors, and omissions occur under the direction and control of the professional employer organization.	310 311 312 313 314
(F) Nothing in divisions (D) and (E) of this section shall be construed to limit any liability or obligation specifically agreed to in the professional employer organization agreement.	315 316 317
<u>(G) A professional employer organization may elect to file federal payroll taxes entirely under the tax identification number of the professional employer organization or entirely under the tax identification number of each client employer. All of the following apply to a professional employer organization that elects to file federal payroll taxes entirely under the tax identification number of each client employer:</u>	318 319 320 321 322 323 324
<u>(1) The professional employer organization shall remain liable for all wages and payroll taxes associated with shared employees, regardless of whether the professional employer</u>	325 326 327

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