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Bill Analysis

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SUMMARY

- Establishes a stand-alone licensing process for pharmacy benefit managers (PBMs) beginning January 1, 2027.
- Increases the license and renewal fees for PBMs to \$2,000 and \$3,000, respectively, as compared to \$200 for licensure and \$300 for renewal for third-party administrators (TPAs) under continuing law.
- Extends the time for which a PBM is required to retain certain books and records.
- Requires PBMs to annually (or more frequently) account to the plan sponsor for any pricing discounts, rebates, inflationary payments, credits, claw backs, fees, grants, charge backs, reimbursements, or other benefits received by the PBM.
- Requires PBMs to disclose to the plan sponsor the terms and conditions of any contract or arrangement between the PBM and any other party relating to the services provided under the agreement with the plan sponsor, and any potential conflicts of interest.
- Requires contracts between an insurer and a PBM to establish an agency relationship and a fiduciary duty on the part of the PBM with respect to the insurer.
- Allows the Superintendent of Insurance to examine a PBM's books and records to determine aggregate number of rebates and payments for pharmacist services.
- Specifies that information obtained by the Superintendent and the Department of Insurance under the PBM law is confidential and not subject to public records law.

DETAILED ANALYSIS

Pharmacy benefit manager (PBM) licensure

Under continuing law, a pharmacy benefit manager (PBM) is an entity that contracts with pharmacies on behalf of an employer, multiple employer welfare arrangement (MEWA), public employee benefit plan, state agency, insurer, managed care organization, or other third-party payer to provide pharmacy services or administration. Currently, a PBM is considered a third-party administrator (TPA), which is defined as 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. A PBM is required to maintain an active TPA license with the Ohio Department of Insurance and is subject to the same requirements and prohibitions as other TPAs.

The bill establishes a stand-alone licensing process for PBMs that is separate from TPAs starting on January 1, 2027. After that date, a person is prohibited from knowingly providing pharmacy benefit management services or knowingly soliciting a plan or plan sponsor in Ohio to act as a PBM for the plan or plan sponsor without a PBM license. Any person who violates that prohibition is guilty of a misdemeanor of the fourth degree. The bill exempts licensed PBMs from the majority of the TPA Law, other than provisions concerning the disclosure of maximum allowable cost pricing information, mailing or delivering drugs to patients, and cost-sharing.¹

License application

The bill requires any person seeking licensure as a PBM to submit an application to the Superintendent of Insurance. The application must be accompanied by a \$2,000 nonrefundable filing fee to be deposited in the Department of Insurance Operating Fund. By comparison, the filing fee for a TPA license application is \$200.²

Aside from the amount of the fee, the procedures for granting a PBM license are nearly identical to those for a TPA license. The Superintendent must approve or deny a PBM license application within 30 days of receipt.³ If an application is denied, the Superintendent must notify the applicant of the denial and the reason for the denial. The denial must include a notice that the applicant is entitled to a hearing if requested.⁴ If an application for licensure is approved and the filing fee received, the Superintendent must grant the applicant a license and a certificate of authority to operate as a PBM.⁵

License renewal

Like a TPA license under continuing law, a PBM license under the bill is considered effective on the day of approval and expires annually on June 30. Unlike a TPA license, if a PBM

¹ R.C. 3959.01, 3957.01, 3957.03, and 3957.99; R.C. 3959.111, 3959.20, and 3959.22, not in the bill.

² R.C. 3957.04; R.C. 3959.06, not in the bill.

³ R.C. 3957.05.

⁴ R.C. 3957.06.

⁵ R.C. 3957.07.

license is approved in May or June, the license will not expire until June 30 of the following year. The Superintendent of Insurance is required to notify licensees regarding license renewal by May 1 of each year.⁶

To renew a license, a PBM must apply to the Department and pay a \$3,000 renewal fee. By comparison, the renewal fee for a TPA license is \$300. If a PBM does not apply for renewal and pay the renewal fee, the Superintendent must cancel the PBM's certificate of authority. To reinstate an expired license, an applicant must apply as if applying for the initial license and pay a filing fee that is the product of \$250 times the number of months the reinstated license will be in effect until June 30 of the following year.⁷

Suspension, revocation, and nonrenewal

Under the bill, the Superintendent of Insurance is authorized to suspend, revoke, or refuse to renew a PBM license, or impose a monetary fine against a PBM, or both, under certain conditions which are substantially identical to those that apply to licensees under the TPA law. Specifically, the Superintendent may take such an action if a PBM is found to have done any of the following:

- Knowingly violated any provisions of the PBM law or rules adopted in accordance with the PBM law;
- Knowingly made a material misstatement in the application for licensure or renewal;
- Obtained or attempted to obtain a license through misrepresentation or fraud;
- Misappropriated, converted to the PBM's own use, or improperly withheld insurance company premiums or contributions held by the PBM in a fiduciary capacity, excluding interest earnings received by the PBM that are disclosed in writing to the plan sponsor;
- In the transaction of business under the license, used fraudulent, coercive, or dishonest practices;
- Failed to appear without reasonable cause or excuse in response to a subpoena, examination, warrant, or other order lawfully issued by the Superintendent;
- Is affiliated with or under the same general management or interlocking directorate or ownership of another PBM that transacts business in Ohio and is not licensed;
- Had a license suspended, revoked, or not renewed in any other state, district, territory, or province on grounds identical to those identified in the PBM law;
- Been convicted of a financially related felony;
- Failed to report a felony conviction within 30 days after the entry date of the judgment or conviction, as required by the PBM law.

⁶ R.C. 3957.07 and 3957.08; R.C. 3959.09, not in the bill.

⁷ R.C. 3957.08.

If a license is suspended, and the order of suspension is not appealed, the PBM must promptly deliver the license to the Superintendent. If a license is revoked or an application for licensure is denied, the PBM is ineligible to apply for a new license for two years after the date of revocation or denial.

If the Superintendent finds, through investigation and after notice and opportunity for a hearing, that a licensed PBM has either committed fraud or engaged in any illegal or dishonest activity in connection with the administration of PBM services, or violated any provision related to written agreements, the Superintendent may impose a monetary fine.⁸

Written agreements

Similar to TPAs under continuing law, after January 1, 2027, the bill requires a PBM to enter into a written agreement with a plan sponsor before acting as a PBM in Ohio. Under continuing law, a “plan sponsor” is the person who establishes an arrangement in written form for the payment of life, dental, health, or disability benefits to covered persons defined by the summary plan description. The term includes a drug benefit plan administered by a pharmacy benefit manager.

The written PBM agreement must include all of the same content required for a TPA agreement under continuing law:

- The term of the agreement;
- An explanation of the services to be performed;
- The method and rate of compensation to be paid by the plan sponsor for services rendered;
- Provisions for the renewal and termination of the agreement.⁹

Conduct under the agreement

The bill also creates several new requirements related to the PBM’s conduct under the written agreement with the plan sponsor that do not apply under the TPA law. Specifically, the bill requires a PBM to do all of the following:

- Retain the agreement as part of the PBM’s official records for the duration of the agreement plus five years thereafter;
- Maintain customary books and records of all transactions and information relative to covered persons or beneficiaries;
- Annually, or more frequently, account to the plan sponsor for any pricing discounts, rebates, inflationary payments, credits, claw backs, fees, grants, charge backs, reimbursements, or other benefits received by the PBM;

⁸ R.C. 3957.11 and 3957.12; R.C. 3959.12 and 3959.13, not in the bill.

⁹ R.C. 3957.09(A) and (B) and 3959.01; R.C. 3959.11, not in the bill.

- Disclose, in writing, to the plan sponsor the terms and conditions of any contract or arrangement between the PBM and any other related party to the plan sponsor, including pharmacy benefit management services to group purchasing organizations;
- Disclose, in writing, to the plan sponsor any activity, policy, practice, contract, or arrangement that directly or indirectly presents any conflict of interest concerning the PBM's relationship with or obligation to the plan sponsor.

In addition, like TPAs under continuing law, the bill requires a PBM to maintain any required insurance coverage or bond provided for or mandated by the federal "Employee Retirement and Income Security Act of 1974" (ERISA).¹⁰

Agent of the insurer

The bill requires any insurer that enters into an agreement with a PBM by which the PBM will perform services related to prescription drug benefits to ensure that the PBM acts as the insurer's agent under the agreement. Furthermore, the insurer must ensure that the PBM owes a fiduciary duty to the insurer in the PBM's performance of services related to prescription drug benefits.¹¹

Disclosures and use of plan funds

The bill prohibits a PBM from doing any of the following:

- Using plan sponsor funds for any purpose not specifically outlined in writing by the PBM;
- Failing to disclose in written solicitation materials and at least once annually to contracted plan sponsors any ownership relationship of 5% or more between the PBM and an insurance carrier;
- Failing to remit insurance company premiums within the policy period or within the time agreed to in writing between the insurance company and the PBM;
- Failing to disclose in writing the method of collecting and holding a plan sponsor's funds.¹²

All of the same prohibitions apply to TPAs under continuing law. In addition, continuing law requires TPAs to disclose fixed plan costs, levels of the specific excess insurance stop-loss deductible, and aggregate excess insurance stop-loss attachment point factors (including minimum point factors). Those additional disclosures do not apply to PBMs under the bill.¹³

¹⁰ R.C. 3957.09; R.C. 3959.11, not in the bill.

¹¹ R.C. 3957.10.

¹² R.C. 3957.13.

¹³ R.C. 3959.14, not in the bill.

Advertisements and reimbursement of nonaffiliates

The bill prohibits a PBM from causing or knowingly permitting the use of an advertisement, promotion, solicitation, representation, proposal, or offer that is untrue, deceptive, or misleading.

Furthermore, a PBM is not permitted to reimburse a pharmacy or pharmacist in an amount that is less than the amount the PBM would reimburse a PBM affiliate for providing the same service. Under the bill, a “PBM affiliate” is a pharmacy or pharmacist that owns or controls, is owned or controlled by, or is under common ownership or control with a PBM.¹⁴

Books and records

The bill requires PBMs to maintain detailed books and records that reflect all administered transactions, specifically regarding premiums or contributions received and deposited and claims and authorized expenses paid. A PBM must do all the following:

- Maintain detailed books and records that reflect all transactions administered by the PBM pursuant to agreements that are subject to this chapter, specifically in regard to premiums or contributions received and deposited, and claims and authorized expenses paid;
- Prepare, journalize, and post the books and records with the terms and conditions of the service agreement between the PBM and the insurer or plan sponsor and in accordance with ERISA;
- Maintain the books for the period in which the PBM provides services for the applicable insurer or plan sponsor, and for ten years afterwards;
- Maintain a cash receipts register of all premiums or contributions received, including, at minimum, the date such contributions are received and deposited.¹⁵

The books and records requirements prescribed by the bill are substantially similar to those that apply to TPAs under continuing law, except that TPAs are required to retain such books and records only for the period in which the TPA provides services to the insurer or plan sponsor. Conversely, the bill requires PBMs to retain such records for ten years after the end of that period.¹⁶

Description of disbursements

Additionally, the bill requires a PBM’s description of a disbursement to include the source document related to the disbursement and all of the following: (1) the check number, (2) the date of disbursement, (3) the person to whom the disbursement was made, (4) the amount disbursed and, if the amount disbursed does not align with the amount billed or authorized, a

¹⁴ R.C. 3957.01(E) and 3957.15(B).

¹⁵ R.C. 3957.14(A).

¹⁶ R.C. 3959.15, not in the bill.

written record as to the application for the disbursement, and (5) if the disbursement is for the earned PBM fee or commission, a written record reflecting the identifying deposit from which the fee is matched. All journal entries for receipts and disbursements must be supported by evidence that is referenced in the journal entry so that it may be traced for verification.¹⁷

The bill's requirements related to a PBM's description of disbursements are substantially similar to those that apply to TPAs under continuing law.¹⁸

Account reconciliation

Like TPAs under continuing law, the bill requires PBMs to prepare and maintain monthly financial institution account reconciliation, if requested by the insurer or plan sponsor as provided in the service agreement.¹⁹ Additionally, within 90 days of the end of the fiscal year, a PBM must file a report with the insurer or plan sponsor with which the PBM has an agreement that discloses all the following:

- The total premiums or contributions received from the plan sponsor, covered persons, or beneficiaries;
- The total administration fees withdrawn by the PBM pursuant to the written service agreement;
- The total claim payments made during the reporting period.²⁰

Return premiums or contributions

Additionally, the bill requires any return premiums or contributions to be paid to the insurer or plan sponsor or credited to the account of the insurer or plan sponsor within 30 days after receipt by the PBM. If the return premium or contribution is credited to the insurer or plan sponsor, the credit must be shown and applied to the next billing statement sent to the insurer or plan sponsor.²¹ The same requirements apply to TPAs under continuing law.²²

Examination of books and records

The bill expressly authorizes the Superintendent to examine a PBM's books and records to determine the following:

- The aggregate amount of rebates received by a PBM;
- The aggregate amount of rebates distributed by a PBM to an appropriate health care payor;

¹⁷ R.C. 3957.14(B) and (C).

¹⁸ R.C. 3959.15, not in the bill.

¹⁹ R.C. 3957.14(D); R.C. 3959.15(H), not in the bill.

²⁰ R.C. 3957.14(E); R.C. 3959.15(I), not in the bill.

²¹ R.C. 3957.14(F).

²² R.C. 3959.15(J), not in the bill.

- The aggregate amount of rebates passed on to an enrollee of each health care payor at the point of sale that reduced the enrollee's applicable deductible, copayment, coinsurance, or other cost-sharing amount;
- The individual and aggregate amount a PBM paid for pharmacist services itemized by pharmacy, product, and goods and services, including other drug or device services;
- The individual and aggregate amount of PBM paid for pharmacist services itemized by pharmacy, product, and goods and services, including other prescription drug or device services.²³

No similar provision applies with respect to TPAs.

Opportunity to correct violations

If a PBM violates any provision of the bill, the Superintendent is required to notify the PBM of the violation. The PBM then has 60 days within which to correct the violation.²⁴ The same cure period applies to TPAs under continuing law.²⁵

Effect of child support default on license

If a licensee is determined to be an obligor under a child support order, the Department of Insurance may not issue a license to the individual, may not renew a license issued to the individual, and shall suspend any license issued to the individual.²⁶ The same provision applies to TPAs under continuing law.²⁷

Federal preemption

The bill's provisions do not apply to an employer's self-insurance plan to the extent that federal law supersedes, preempts, prohibits, or otherwise precludes its application to such a plan.²⁸ The same limitation applies to TPAs under continuing law.²⁹

Confidentiality

The bill specifies that all information obtained by the Superintendent or the Department in administering the PBM law is proprietary and not subject to the Public Records Law.³⁰

²³ R.C. 3957.14(G).

²⁴ R.C. 3957.14(I).

²⁵ R.C. 3959.15(K), not in the bill.

²⁶ R.C. 3957.17.

²⁷ R.C. 3959.17, not in the bill.

²⁸ R.C. 3957.16.

²⁹ R.C. 3959.16, not in the bill.

³⁰ R.C. 3959.15(A).

HISTORY

Action	Date
Introduced	04-09-25
