As Introduced

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H. B. No. 229

Representative Deeter

To amend section 3959.01 and to enact sections 3957.01, 3957.02, 3957.03, 3957.04, 3957.05, 3957.06, 3957.07, 3957.08, 3957.09, 3957.10, 3957.11, 3957.12, 3957.13, 3957.14, 3957.15, 3957.16, 3957.17, and 3957.99 of the Revised Code to establish a stand-alone licensing process and new contractual requirements for pharmacy benefit managers.

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

Section 1. That section 3959.01 be amended and sections 3957.01, 3957.02, 3957.03, 3957.04, 3957.05, 3957.06, 3957.07, 3957.08, 3957.09, 3957.10, 3957.11, 3957.12, 3957.13, 3957.14, 3957.15, 3957.16, 3957.17, and 3957.99 of the Revised Code be enacted to read as follows:

Sec. 3957.01. As used in this chapter:

(A) "Claims processing services" means administrative services performed in connection with processing and adjudicating claims relating to pharmacist services, including both of the following:

(1) Receiving payments for pharmacist services;

(2) Making payments to pharmacists or pharmacies for

pharmacist services.

(B) "Contracted pharmacy" or "pharmacy" means a pharmacy, as defined in section 4729.01 of the Revised Code, located in this state and participating in either the network of a pharmacy benefit manager or in a health care or pharmacy benefit plan through a direct contract or through a contract with a pharmacy services administration organization, group purchasing organization, or another contracting agent.

(C) "Other prescription drug or device services" means services other than claims processing services, provided directly or indirectly, whether in connection with or separate from claims processing services, including all of the following:

(1) Negotiating rebates, discounts, or other financial incentives and arrangements with drug companies;

(2) Disbursing or distributing rebates;

(3) Managing or participating in incentive programs or arrangements for pharmacist services;

(4) Negotiating or entering into contractual arrangements with pharmacists or pharmacies, or both;

(5) Developing formularies;

(6) Designing prescription benefit programs;

(7) Advertising or promoting services.

(D) "Pharmacist" means an individual licensed to engage in the practice of pharmacy, as defined in section 4729.01 of the Revised Code.

(E) "Pharmacy benefit manager affiliate" means a pharmacy or pharmacist that directly or indirectly, through one or more

intermediaries, owns or controls, is owned or controlled by, or is under common ownership or control with a pharmacy benefit manager.

(F) "Pharmacy services administrative organization" means an organization that helps community pharmacies and pharmacy benefit managers or third-party payers achieve administrative efficiencies, including contracting and payment efficiencies.

(G)(1) "Rebate" means a discount or other price concession, or a payment that is both of the following:

(a) Based on utilization of a prescription drug;

(b) Paid by a manufacturer or third party, directly or indirectly, to a pharmacy benefit manager, pharmacy services administrative organization, or pharmacy after a claim has been processed and paid at a pharmacy.

(2) "Rebate" includes all of the following:

(a) Incentives, disbursements, and reasonable estimates of a volume-based discount;

(b) Incentives or credits regardless of categorization, market share incentives, promotional allowances, commissions, educational grants, market share of utilization, drug pull-through programs, implementation allowances, clinical detailing, rebate submission fees, and administrative or management fees;

(c) Bona fide fees, including manufacturer administrative fees or corporate fees that any vendor, affiliate, or subcontractor, including any group purchasing organization, receives from a pharmaceutical manufacturer for administrative costs including formulary placement and access.

(3) "Rebate" does not include pharmacy purchase discounts

and related service fees a vendor or a vendor's affiliates receive from a manufacturer or third party that are attributable to or based on the purchase of product to stock, or the dispensing of products from, a vendor's affiliated mail order and specialty drug pharmacies.

(H) "Subject to this chapter" means, in the context of an agreement involving a pharmacy benefit manager, that the agreement is entered into, amended, or renewed on or after January 1, 2027.

(I) "Third-party payer" has the same meaning as in section 3901.38 of the Revised Code, except that the term does not include a pharmacy benefit manager subject to this chapter.

(J) "Drug product reimbursement," "fiduciary," "fiscal year," "insurer," "pharmacy benefit manager," "plan," "plan sponsor," and "self-insurance program" have the same meanings as in section 3959.01 of the Revised Code.

Sec. 3957.02. The superintendent of insurance shall establish by rule, adopted in accordance with Chapter 119. of the Revised Code, and administer a process for licensing pharmacy benefit managers in this state.

Sec. 3957.03. (A) On and after January 1, 2027, no person shall knowingly solicit a plan or sponsor of a plan that is domiciled in this state or has its principal headquarters or principal administrative office in this state to act as a pharmacy benefit manager for the plan or plan sponsor unless the person is licensed under this chapter.

(B) No person shall knowingly provide pharmacy benefit management services pursuant to an agreement subject to this chapter unless the person is licensed under this chapter.

Sec. 3957.04. (A) A person that seeks to be licensed as a pharmacy benefit manager shall file an application with the superintendent of insurance in the form and manner prescribed by the superintendent.

(B) All applications for a pharmacy benefit manager license shall be accompanied by a nonrefundable filing fee of two thousand dollars per application.

(C) All fees collected under this section and section 3957.08 of the Revised Code shall be paid into the state treasury to the credit of the department of insurance operating fund created under section 3901.021 of the Revised Code.

Sec. 3957.05. The superintendent of insurance shall approve or deny an application for a license under this chapter within thirty days after receipt.

Sec. 3957.06. Within thirty days after denying an application for a license under this chapter, the superintendent of insurance shall notify the applicant of the denial and the reasons for the denial. The superintendent shall include a statement in the notice advising that the applicant is entitled to a hearing, in accordance with Chapter 119. of the Revised Code, if the applicant requests such a hearing within thirty days after the notice is sent.

Sec. 3957.07. Upon approving an application for a license under this chapter and receiving payment of the associated filing fee, the superintendent of insurance shall grant the applicant a license and issue a certificate of authority to operate as a pharmacy benefit manager in this state. The license is effective on the date the application is approved by the superintendent and expires annually on the thirtieth day of

June. If the application is approved in May or June, the license expires on the thirtieth day of June the following year. All licenses may be renewed, annually, in accordance with section 3957.08 of the Revised Code.

Sec. 3957.08. (A) The superintendent of insurance shall provide a renewal notice to each person licensed under this chapter not later than the first day of May each year.

(B) A person licensed under this chapter may renew the license by applying to the superintendent, in the form and manner prescribed by the superintendent, and paying a renewal fee of three thousand dollars before the date the license expires.

(C) In the event that a person licensed under this chapter fails to apply for renewal and pay the renewal fee before the date the license expires, the superintendent shall cancel the person's certificate of authority to operate as a pharmacy benefit manager in this state. A person whose license is expired may apply to reinstate the license in the same manner as an original application under section 3957.04 of the Revised Code, except that the filing fee is the product of two hundred fifty dollars times the number of months the reinstated license will be in effect.

Sec. 3957.09. (A) Except as otherwise provided in division (G) of this section, no person shall act as a pharmacy benefit manager on or after January 1, 2027, without first entering into a written agreement with a plan sponsor.

(B) The pharmacy benefit manager shall retain the written agreement as part of the pharmacy benefit manager's official records for the duration of the agreement and for five years

thereafter. Each agreement shall include, at a minimum, all of the following:

(1) The term of the agreement;

(2) An explanation of the services to be performed by the pharmacy benefit manager;

(3) The method and rate of compensation to be paid by the plan sponsor to the pharmacy benefit manager for services rendered;

(4) Provisions for the renewal and termination of the agreement.

(C) A pharmacy benefit manager shall maintain, for the duration of the agreement with the plan sponsor, customary books and records of all transactions and information relative to covered persons or beneficiaries. The pharmacy benefit manager shall maintain such books and records either electronically or in physical form at the pharmacy benefit manager's principal office or branch office.

(D) A pharmacy benefit manager shall account, annually or more frequently, to the plan sponsor for any pricing discounts, rebates of any kind, inflationary payments, credits, claw backs, fees, grants, charge backs, drug product reimbursements, or other benefits received by the pharmacy benefit manager. The pharmacy benefit manager shall give the plan sponsor access to all financial and utilization information used by the pharmacy benefit manager in relation to pharmacy benefit management services provided to the plan sponsor.

(E) A pharmacy benefit manager shall disclose, in writing, to the plan sponsor the terms and conditions of any contract or arrangement between the pharmacy benefit manager and any other

party relating to pharmacy benefit management services provided by the pharmacy benefit manager to the plan sponsor, including pharmacy benefit management services provided to group purchasing organizations.

(F) A pharmacy benefit manager shall disclose, in writing, to the plan sponsor any activity, policy, practice, contract, or arrangement of the pharmacy benefit manager that directly or indirectly presents any conflict of interest concerning the pharmacy benefit manager's relationship with or obligation to the plan sponsor.

(G) Divisions (A) to (F) of this section apply to agreements subject to this chapter and pharmacy benefit management services provided pursuant to those agreements. Nothing in those divisions applies to pharmacy benefit management services provided pursuant to an agreement that is not subject to this chapter.

(H) A pharmacy benefit manager duly licensed under this chapter shall, at all times, maintain any required insurance coverage or bond as provided for and mandated by the "Employee Retirement and Income Security Act of 1974," 29 U.S.C. 1001.

Sec. 3957.10. An insurer that enters into an agreement subject to this chapter with a pharmacy benefit manager to perform any services related to prescription drug benefits shall ensure that, under the agreement, the pharmacy benefit manager acts as the insurer's agent and owes a fiduciary duty to the insurer in the pharmacy benefit manager's performance of services related to the insurer's prescription drug benefits.

Sec. 3957.11. (A) Upon notice and hearing in accordance with Chapter 119. of the Revised Code, the superintendent of

insurance may suspend for a period not exceeding two years, revoke, or refuse to renew any license issued under this chapter, or impose a monetary fine against a licensee, or both, if upon investigation and proof the superintendent finds that the licensee has done any of the following:

(1) Knowingly violated any provision of this chapter or any rule promulgated by the superintendent in accordance with this chapter;

(2) Knowingly made a material misstatement in the application for licensure or renewal;

(3) Obtained or attempted to obtain a license through misrepresentation or fraud;

(4) Misappropriated, converted to the licensee's own use, or improperly withheld insurance company premiums or contributions held by the licensee in a fiduciary capacity, excluding interest earnings received by the licensee that are disclosed in writing to the plan sponsor;

(5) In the transaction of business under the license, used fraudulent, coercive, or dishonest practices;

(6) Failed to appear without reasonable cause or excuse in response to a subpoena, examination, warrant, or other order lawfully issued by the superintendent;

(7) Is affiliated with or under the same general management or interlocking directorate or ownership of another pharmacy benefit manager that transacts business in this state and is not licensed under this chapter;

(8) Had a license suspended, revoked, or not renewed in any other state, district, territory, or province on grounds

identical to those stated in this section;

(9) Been convicted of a financially related felony;

(10) Failed to report a felony conviction as required by section 3957.12 of the Revised Code.

(B) Upon receipt of notice of the order of suspension in accordance with sections 119.05 and 119.07 of the Revised Code, the licensee shall promptly deliver the license to the superintendent, unless the order of suspension is appealed under section 119.12 of the Revised Code.

(C) Any person whose license is revoked or whose application is denied pursuant to this chapter is ineligible to apply for a pharmacy benefit manager license for two years after the date the license is revoked or the application is denied.

(D) The superintendent may impose a monetary fine against a licensee if, upon investigation and after notice and opportunity for hearing in accordance with Chapter 119. of the Revised Code, the superintendent finds that the licensee has done either of the following:

(1) Committed fraud or engaged in any illegal or dishonest activity in connection with the administration of pharmacy benefit management services;

(2) Violated any provision of section 3957.09 of the Revised Code or any rule adopted by the superintendent pursuant to or to implement that section.

Sec. 3957.12. Any person that, while licensed as a pharmacy benefit manager under this chapter, is convicted of a felony, shall report the conviction to the superintendent of insurance within thirty days after the entry date of the

judgment of conviction. Within that thirty-day period, the person shall also provide the superintendent with a copy of the judgment, the commitment order or the order imposing a community control sanction, as defined in section 2929.01 of the Revised Code, and any other relevant documents.

Sec. 3957.13. (A) On and after January 1, 2027, no pharmacy benefit manager shall do any of the following:

(1) Use plan sponsor funds for any purpose not specifically set forth in writing by the pharmacy benefit manager;

(2) Fail to disclose in written solicitation materials and at least once annually to contracted plan sponsors any ownership relationship of five per cent or more between the pharmacy benefit manager and an insurance carrier;

(3) Fail to remit insurance company premiums within the policy period or within the time agreed to in writing between the insurance company and the pharmacy benefit manager;

(4) Fail to disclose in writing the method of collecting and holding a plan sponsor's funds.

(B) This section does not apply to the extent that it conflicts with an agreement that is not subject to this chapter.

Sec. 3957.14. (A) On and after July 1, 2027, a pharmacy benefit manger shall do all of the following:

(1) Maintain detailed books and records that reflect all transactions administered by the pharmacy benefit manager 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.

(2) Prepare, journalize, and post the books and records described in division (A)(1) of this section in accordance with the terms and conditions of the service agreement between the pharmacy benefit manager and the insurer or plan sponsor and in accordance with the "Employee Retirement and Income Security Act of 1974," 29 U.S.C. 1001.

(3) Maintain the books and records described in division (A)(1) of this section for the period in which the pharmacy benefit manager provides services for the applicable insurer or plan sponsor and for ten years thereafter.

(4) Maintain a cash receipts register of all premiums or contributions received, including, at minimum, the date such contributions are received and deposited.

(B) For the purposes of the books and records required by this section, a pharmacy benefit manager's description of a disbursement shall be in sufficient detail to identify the source document substantiating the purpose of the disbursement, and shall include 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 written record as to the application for the disbursement;

(5) If the disbursement is for the earned pharmacy benefit manager fee or commission, a written record reflecting the identifying deposit from which the fee is matched.

(C) A pharmacy benefit manager shall support all journal

entries for receipts and disbursements with evidence that is referenced in the journal entry so that it may be traced for verification.

(D) A pharmacy benefit manager shall prepare and maintain monthly financial institution account reconciliations if requested by an insurer or plan sponsor as provided in any service agreement by and between the pharmacy benefit manager and the insurer or plan sponsor that is subject to this chapter.

(E) A pharmacy benefit manager shall prepare a report to be filed with the insurer or plan sponsor with which the pharmacy benefit manager has an agreement subject to this chapter within ninety days after the end of the fiscal year of the plan which, at minimum, discloses all of the following:

(1) The total premiums or contributions received from the plan sponsor, covered persons, or beneficiaries;

(2) The total administration fees withdrawn by the pharmacy benefit manager pursuant to the written service agreement;

(3) The total claim payments made during the reporting period.

(F) A pharmacy benefit manager shall pay return premiums or contributions to the insurer or plan sponsor with which the pharmacy benefit manager has an agreement subject to this chapter, or credit such return premiums or contributions to the account of the insurer or plan sponsor, within thirty days after receipt by the pharmacy benefit manager. If the pharmacy benefit manager credits the return premium or contribution to the insurer or plan sponsor, the pharmacy benefit manager shall show and apply the credit to the next billing statement sent to the

insurer or plan sponsor.

(G) On and after January 1, 2027, the superintendent of insurance may examine the books and records of a pharmacy benefit manager as necessary to determine the following:

(1) The aggregate amount of rebates received by a pharmacy benefit manager;

(2) The aggregate amount of rebates distributed by a pharmacy benefit manager to an appropriate health care payor;

(3) 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;

(4) The individual and aggregate amount paid by a health care payor to the pharmacy benefit manager for pharmacist services itemized by pharmacy, product, and goods and services, including other prescription drug or device services;

(5) The individual and aggregate amount a pharmacy benefit manager paid for pharmacist services itemized by pharmacy, product, and goods and services, including other prescription drug or device services.

(H) This section does not limit the power of the superintendent to examine or audit the books and records of a pharmacy benefit manager.

(I) Upon written notification to a pharmacy benefit manager by the superintendent of insurance that the pharmacy benefit manager has violated any provision of this chapter, the pharmacy benefit manager shall correct the violation specified in the notice within sixty days.

Sec. 3957.15. (A) All information and data acquired by the superintendent of insurance or the department of insurance under this chapter is considered proprietary and confidential and is not a public record under section 149.43 of the Revised Code.

(B) On and after January 1, 2027, no pharmacy benefit manager or representative of a pharmacy benefit manager shall do either of the following:

(1) Cause or knowingly permit the use of any advertisement, promotion, solicitation, representation, proposal, or offer that is untrue, deceptive, or misleading;

(2) Reimburse a pharmacy or pharmacist in this state an amount less than the amount that the pharmacy benefit manager reimburses a pharmacy benefit manager affiliate for providing the same service.

Sec. 3957.16. This chapter does 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 plan.

Sec. 3957.17. On receipt of a notice pursuant to section 3123.43 of the Revised Code, the superintendent of insurance shall comply with sections 3123.41 to 3123.50 of the Revised Code and any applicable rules adopted under section 3123.63 of the Revised Code with respect to a license issued pursuant to this chapter.

Sec. 3957.99. Whoever violates section 3957.03 of the Revised Code is guilty of a misdemeanor of the fourth degree.

Sec. 3959.01. As used in this chapter:

(A) "Administration fees" means any amount charged a

covered person for services rendered. "Administration fees" includes commissions earned or paid by any person relative to services performed by an administrator.

(B) "Administrator" means any person who adjusts or settles claims on, residents of this state in connection with life, dental, health, prescription drugs, or disability insurance or self-insurance programs. "Administrator" includes a pharmacy benefit manager, except as described in division (B)(6) of this section. "Administrator" does not include any of the following:

(1) An insurance agent or solicitor licensed in this state whose activities are limited exclusively to the sale of insurance and who does not provide any administrative services;

(2) Any person who administers or operates the workers' compensation program of a self-insuring employer under Chapter 4123. of the Revised Code;

(3) Any person who administers pension plans for the benefit of the person's own members or employees or administers pension plans for the benefit of the members or employees of any other person;

(4) Any person that administers an insured plan or a self-insured plan that provides life, dental, health, or disability benefits exclusively for the person's own members or employees;

(5) Any health insuring corporation holding a certificate of authority under Chapter 1751. of the Revised Code or an insurance company that is authorized to write life or sickness and accident insurance in this state;

(6) On and after January 1, 2027, a pharmacy benefit manager licensed under Chapter 3957. of the Revised Code but

only with respect to agreements that are entered into, amended, or renewed on or after that date.

(C) "Aggregate excess insurance" means that type of coverage whereby the insurer agrees to reimburse the insured employer or trust for all benefits or claims paid during an agreement period on behalf of all covered persons under the plan or trust which exceed a stated deductible amount and subject to a stated maximum.

(D) "Contracted pharmacy" or "pharmacy" means a pharmacy located in this state participating in either the network of a pharmacy benefit manager or in a health care or pharmacy benefit plan through a direct contract or through a contract with a pharmacy services administration organization, group purchasing organization, or another contracting agent.

(E) "Contributions" means any amount collected from a covered person to fund the self-insured portion of any plan in accordance with the plan's provisions, summary plan descriptions, and contracts of insurance.

(F) "Drug product reimbursement" means the amount paid by a pharmacy benefit manager to a contracted pharmacy for the cost of the drug dispensed to a patient and does not include a dispensing or professional fee.

(G) "Fiduciary" has the meaning set forth in section 1002(21)(A) of the "Employee Retirement Income Security Act of 1974," 88 Stat. 829, 29 U.S.C. 1001, as amended.

(H) "Fiscal year" means the twelve-month accounting period commencing on the date the plan is established and ending twelve months following that date, and each corresponding twelve-month accounting period thereafter as provided for in the summary plan

description.

(I) "Insurer" means an entity authorized to do the business of insurance in this state or, for the purposes of this section, a health insuring corporation authorized to issue health care plans in this state.

(J) "Managed care organization" means an entity that provides medical management and cost containment services and includes a medicaid managed care organization, as defined in section 5167.01 of the Revised Code.

(K) "Maximum allowable cost" means a maximum drug product reimbursement for an individual drug or for a group of therapeutically and pharmaceutically equivalent multiple source drugs that are listed in the United States food and drug administration's approved drug products with therapeutic equivalence evaluations, commonly referred to as the orange book.

(L) "Maximum allowable cost list" means a list of the drugs for which a pharmacy benefit manager imposes a maximum allowable cost.

(M) "Multiple employer welfare arrangement" has the same meaning as in section 1739.01 of the Revised Code.

(N) "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. "Pharmacy benefit manager" includes the state pharmacy benefit manager selected under section 5167.24 of the Revised Code.

(O) "Plan" means any arrangement in written form for the payment of life, dental, health, or disability benefits to covered persons defined by the summary plan description and includes a drug benefit plan administered by a pharmacy benefit manager.

(P) "Plan sponsor" means the person who establishes the plan.

(Q) "Self-insurance program" means a program whereby an employer provides a plan of benefits for its employees without involving an intermediate insurance carrier to assume risk or pay claims. "Self-insurance program" includes but is not limited to employer programs that pay claims up to a prearranged limit beyond which they purchase insurance coverage to protect against unpredictable or catastrophic losses.

(R) "Specific excess insurance" means that type of coverage whereby the insurer agrees to reimburse the insured employer or trust for all benefits or claims paid during an agreement period on behalf of a covered person in excess of a stated deductible amount and subject to a stated maximum.

(S) "Summary plan description" means the written document adopted by the plan sponsor which outlines the plan of benefits, conditions, limitations, exclusions, and other pertinent details relative to the benefits provided to covered persons thereunder.

(T) "Third-party payer" has the same meaning as in section 3901.38 of the Revised Code.

Section 2. That existing section 3959.01 of the Revised Code is hereby repealed.