As Introduced

133rd General Assembly
Regular Session
2019-2020

H. B. No. 779

Representatives Clites, Miranda

Cosponsors: Representatives Boyd, Carfagna, Crossman, Galonski, Lepore-Hagan, Lightbody, Lipps, Liston, Sweeney, West

A BILL

To amend sections 3959.01, 3959.04, 3959.05, 3959.11, 3959.12, 3959.15, 3959.16, and 3959.20 and to enact section 3959.21 of the Revised Code regarding pharmacy benefit managers.

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

Section 1. That sections 3959.01, 3959.04, 3959.05, 3959.11, 3959.12, 3959.15, 3959.16, and 3959.20 be amended and section 3959.21 of the Revised Code be enacted to read as follows:

Sec. 3959.01. ~~(A)~~ 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. "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.

(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.

Sec. 3959.04. (A) Administrators may be tested and shall be licensed by the superintendent of insurance in accordance with rules adopted by the superintendent.

(B) An administrator who has been licensed or certified by the state of the administrator's domicile under a statute or rule similar to ~~sections 3959.01 to 3959.16 of the Revised Code~~ this chapter shall, upon application, be licensed without testing, provided the state of domicile recognizes and grants licenses to administrators of this state who have obtained licenses under ~~such sections~~this chapter.

Sec. 3959.05. No person shall solicit a plan or sponsor of a plan to act as an administrator for, or provide administrative services to, a plan or sponsor of a plan that is either domiciled in this state or has its principal headquarters or principal administrative office in this state unless the person is duly licensed under ~~sections 3959.01 to 3959.16 of the~~

~~Revised Code~~this chapter.

Sec. 3959.11. (A) No person may act as an administrator without a written agreement between the administrator and the plan sponsor. Such written agreement shall be retained as part of the official records of the administrator for the duration of the agreement and for five years thereafter. Each such agreement shall contain, at a minimum, all of the following information:

(1) The term of the agreement;

(2) An explanation of the services to be performed by the administrator;

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

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

(B) Every administrator shall maintain in its principal office or branch office, if any, 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.

(C) Each administrator duly licensed under ~~sections 3959.01 to 3959.16 of the Revised Code~~ 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," 88 Stat. 829, 29 U.S.C. 1001, as amended.

Sec. 3959.12. (A) Any license issued under sections 3959.01 to 3959.16 of the Revised Code may be suspended for a period not to exceed two years, revoked, or not renewed by the superintendent of insurance after notice to the licensee and

hearing in accordance with Chapter 119. of the Revised Code. The superintendent may suspend, revoke, or refuse to renew a license if upon investigation and proof the superintendent finds that the licensee has done any of the following:

(1) Knowingly violated any provision of ~~sections 3959.01 to 3959.16 or 3959.20 of the Revised Code~~ this chapter or any rule promulgated by the superintendent;

(2) Knowingly made a material misstatement in the application for the license;

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

(4) Misappropriated or converted to the licensee's own use or improperly withheld insurance company premiums or contributions held in a fiduciary capacity, excluding, however, any interest earnings received by the administrator as disclosed in writing by the administrator 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 administrator that transacts business in this state and is not licensed under ~~sections 3959.01 to 3959.16 of the Revised Code~~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 ~~sections 3959.01 to 3959.16 of the Revised Code~~this chapter;

(9) Been convicted of a financially related felony;

(10) Failed to report a felony conviction as required under section 3959.13 of the Revised Code.

(B) Upon receipt of notice of the order of suspension in accordance with section 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 ~~sections 3959.01 to 3959.16 of the Revised Code~~ this chapter is ineligible to apply for an administrators license for two years.

(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 3959.111 of the Revised Code or any rule adopted by the superintendent pursuant to or to implement that section.

Sec. 3959.15. (A) Administrators shall maintain detailed books and records that reflect all administered transactions specifically in regard to premiums or contributions received and

deposited and claims and authorized expenses paid.

(B) The detailed preparation, journalizing, and posting of such books and records shall be made in accordance with the terms and conditions of the service agreement between the administrator and the insurer or plan sponsor and in accordance with the "Employee Retirement and Income Security Act of 1974," 88 Stat. 829, 29 U.S.C. 1001, as amended.

(C) All books and records maintained by an administrator on behalf of an insurer or plan sponsor for a calendar or fiscal year shall be maintained for the period in which the administrator is providing service for the insurer or plan sponsor.

(D) Administrators shall maintain a cash receipts register of all premiums or contributions received. The minimum detail required in the register shall be date received and deposited.

(E) The 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. If the amount disbursed does not agree with the amount billed or authorized, the administrator shall prepare a written record as to the application for the disbursement.

(F) If the disbursement is for the earned administrative fee or commission, the disbursement shall be supported by a

written record reflecting the identifying deposit from which the fee was matched.

(G) All journal entries for receipts and disbursements shall be supported by evidential matter. The evidential matter must be referenced in the journal entry so that it may be traced for verification.

(H) The administrator shall prepare and maintain monthly financial institution account reconciliations if such service is requested by an insurer or plan sponsor as provided in the service agreement by and between the administrator and the insurer or plan sponsor.

(I) The administrator shall prepare a report to be filed with the insurer or plan sponsor within ninety days of the end of the fiscal year of the plan, which discloses at least 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 administrator pursuant to the written service agreement;

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

(J) Return premiums or contributions shall be paid to the insurer or plan sponsor or credited to the account of the insurer or plan sponsor within thirty days after receipt by the administrator. 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.

(K) Upon written notification to an administrator by the superintendent of insurance that the administrator has violated any provision of ~~sections 3959.01 to 3959.16 of the Revised Code~~this chapter, the administrator shall have sixty days within which to correct the violation specified in the notice~~, in compliance with such sections~~.

Sec. 3959.16. ~~Sections 3959.01 to 3959.16 of the Revised Code do~~ This chapter does not apply to an employer's self-insurance plan to the extent that federal law supersedes, preempts, prohibits, or otherwise precludes the application of any provisions of ~~those sections~~ this chapter to such plan.

Sec. 3959.20. (A) As used in this section:

(1) "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.

(2) "Health benefit plan" and "health plan issuer" have the same meanings as in section 3922.01 of the Revised Code.

(3) "Pharmacy audit" has the same meaning as in section 3901.81 of the Revised Code.

~~(4) "Pharmacy benefit manager" and "administrator" have the same meanings as in section 3959.01 of the Revised Code.~~

(B) No health plan issuer, pharmacy benefit manager, or any other administrator shall require cost-sharing in an amount, or direct a pharmacy to collect cost-sharing in an amount, greater than the lesser of either of the following from an individual purchasing a prescription drug:

(1) The amount an individual would pay for the drug if the

drug were to be purchased without coverage under a health benefit plan;

(2) The net reimbursement paid to the pharmacy for the prescription drug by the health plan issuer, pharmacy benefit manager, or administrator.

(C)(1) No health plan issuer, pharmacy benefit manager, or administrator shall retroactively adjust a pharmacy claim for reimbursement for a prescription drug unless the adjustment is the result of either of the following:

(a) A pharmacy audit conducted in accordance with sections 3901.811 to 3901.814 of the Revised Code;

(b) A technical billing error.

(2) No health plan issuer, pharmacy benefit manager, or administrator shall charge a fee related to a claim unless the amount of the fee can be determined at the time of claim adjudication.

(D) The department of insurance shall create a web form that consumers can use to submit complaints relating to violations of this section.

Sec. 3959.21. (A) As used in this section:

(1) "Cost sharing" means the cost to a covered person under a health benefit plan according to any coverage limit, copayment, coinsurance, deductible, or other out-of-pocket expense requirements imposed by the plan.

(2) "Retail seller" has the same meaning as in section 4729.01 of the Revised Code.

(B) A pharmacy benefit manager shall refill a prescription

for a drug that was shipped but not delivered to a covered person. The covered person shall be responsible for providing to the pharmacy benefit manager proof of non-delivery.

(C) A pharmacy benefit manager shall not do either of the following:

(1) Require a covered person to obtain a prescription drug through United States mail or other delivery service;

(2) Require cost sharing for a prescription drug obtained at a retail seller in an amount greater than the amount the covered person would pay for the drug if the drug were shipped and delivered to the covered person through United States mail or other delivery service.

(D) The superintendent of insurance shall adopt rules as necessary to implement the requirements of this section. Such rules shall include the acceptable forms of proof of non-delivery under division (B) of this section. In adopting rules pursuant to this division, the superintendent shall not be subject to division (F) of section 121.95 of the Revised Code.

Section 2. That existing sections 3959.01, 3959.04, 3959.05, 3959.11, 3959.12, 3959.15, 3959.16, and 3959.20 of the Revised Code are hereby repealed.