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
(2) "Group policyholder" means a policyholder for a health insurance policy covering fifty or more full-time employees. "Group policyholder" includes an authorized representative of a group policyholder.

(3) "Health plan issuer" has the same meaning as in section 3922.01 of the Revised Code.

(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.

(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.

(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:

(a) The net claims paid or incurred by month;

(b)(i) If the group policyholder is an employer, the monthly enrollment data by employee only, employee and spouse, and employee and family;

(ii) If the group policyholder is not an employer, the monthly enrollment data shall be provided and organized in a relevant manner.

(c) Monthly prescription claims information;

(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
diagnosis.

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

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

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

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

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

(G) A group policyholder that does not provide the
certification required in division (F) of this section is not
ettitled to receive the protected health information described
in division (B)(2)(d) of this section, but is entitled to
receive a report of claim information that includes the other
information described under division (B) of this section.

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

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

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

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

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

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

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

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

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

(b) Is reasonably necessary for such person to perform its function for the disclosing insurance institution, agent, or insurance support organization.

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

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

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

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

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

(2) For either the disclosing or receiving insurance institution, agent, or insurance support organization to perform its function in connection with an insurance transaction involving the individual.

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

(E) To an insurance regulatory authority;

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

(G) As otherwise permitted or required by law;

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

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

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

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

(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.

(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:

(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;

(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.

(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:

(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;

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

(3) The person receiving such information agrees not to use it except in connection with the marketing of a product or service.

(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;

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

(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;

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

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

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

(Q) (R) To a certificate holder or policyholder for the
purpose of providing information regarding the status of an insurance transaction;

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

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

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

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

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

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

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

(4) Provide written notice to each shared employee it assigns to perform services to a client employer of the relationship between and the responsibilities of the professional employer organization and the client employer;

(5) Maintain complete records separately listing the manual classifications of each client employer and the payroll reported to each manual classification for each client employer for each payroll reporting period during the time period covered in the professional employer organization agreement;

(6) Maintain a record of workers' compensation claims for each client employer;

(7) Make periodic reports, as determined by the administrator of workers' compensation, of client employers and total workforce to the administrator;

(8) Report individual client employer payroll, claims, and classification data under a separate and unique subaccount to the administrator;

(9) Within fourteen days after receiving notice from the bureau of workers' compensation that a refund or rebate will be applied to workers' compensation premiums, provide a copy of that notice to any client employer to whom that notice is relevant.

(B) The professional employer organization with whom a shared employee is coemployed shall provide a list of all of the following information to the client employer upon the written request of the client employer:

(1) All workers' compensation claims, premiums, and
payroll associated with that client employer;

(2) Compensation and benefits paid and reserves established for each claim listed under division (B)(1) of this section;

(3) Any other information available to the professional employer organization from the bureau of workers' compensation regarding that client employer.

(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.

(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.

(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:

(1) Conduct the client employer's business, including training and supervising shared employees;

(2) Ensure the quality, adequacy, and safety of the goods or services produced or sold in the client employer's business;
(3) Discharge any fiduciary responsibility that the client employer may have;

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

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

(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.

(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.

(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.

(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:

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

(2) The professional employer organization shall include in the professional employer organization agreement between the professional employer organization and each client employer a provision that reflects the professional employer organization's liability under division (G)(1) of this section.

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

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

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