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H.B. 229
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136th General Assembly

Fiscal Note & Local Impact Statement

Click here for H.B. 229's Bill Analysis

Version: In House General Government

Primary Sponsor: Rep. Deeter

Local Impact Statement Procedure Required: No

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Highlights

- The bill may increase the Department of Insurance's administrative costs associated with oversight of pharmacy benefit managers (PBMs). The Department's administrative cost is paid from the Department of Insurance Operating Fund (Fund 5540). The bill imposes certain fees and fines which must be deposited into Fund 5540. Any fees and fines collected under the bill may be sufficient to pay for such cost increases.
- The bill has no direct fiscal impact to local governments.

Detailed Analysis

Pharmacy benefit manager

The bill establishes a licensing process and requirements governing a pharmacy benefit manager (PBM), which are separate from a third-party administrator (TPA). Beginning July 1, 2027, the bill prohibits any person from knowingly (1) soliciting a plan or sponsor of a plan that is domiciled in the state or has its principal headquarters or principal administrative office in the state to act as a PBM for the plan or plan sponsor unless the person is licensed under the bill, and (2) providing pharmacy management services pursuant to an agreement subject to the bill's provisions unless the person is licensed under the bill. The bill specifies that whoever violates the prohibition is guilty of a fourth degree misdemeanor.

The bill specifies that a PBM or representative of a PBM, beginning July 1, 2027, must not: (1) cause or knowingly permit the use of any advertisement, promotion, solicitation, representation, proposal, or offer that is untrue, deceptive, or misleading, or (2) reimburse a pharmacy or pharmacist in this state an amount less than the amount that the PBM reimburses a pharmacy benefit manager affiliate for providing the same service.

The bill also specifies reporting and disclosure requirements associated with PBMs on and after July 1, 2027. The bill specifies the Department of Insurance oversight duties related to PBMs.

Under existing law, a PBM is a type of TPA and is required to obtain a license as a TPA from the Department of Insurance. Under existing law, a fee of $200 for license application and $300 for license renewal are imposed on a TPA. A PBM is 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. TPAs, inclusive of PBMs, are required to comply with certain requirements under existing law.

Licensure

A person seeking to be licensed as a PBM is required to apply to the Superintendent of Insurance in the form and manner prescribed by the Superintendent. The application must include a nonrefundable filing fee of $2,000 per application. The bill also specifies the licensing process if an application is denied. The bill specifies that if approved, the license is effective on the date the application is approved by the Superintendent and expires annually on June 30. If the application is approved in May or June, the license expires on June 30 the following year. The bill specifies all licenses may be renewed annually.

The bill requires the Superintendent to provide a renewal notice to each person licensed under the bill by a certain date. Each application for a license renewal must include a $3,000 fee, which must be paid before the license expires. The bill requires the Superintendent to cancel a person's certificate of authority to operate as a PBM in the state if the person fails to apply for renewal and pay the renewal fee before the date the license expires. A person with an expired PBM license is allowed to reinstate the license in the same manner as an original application process, except that the filing fee equals $250 multiplied by the number of months the reinstated license will be in effect. The bill requires all application and renewal fees be deposited into the existing Department of Insurance Operating Fund (Fund 5540).

Suspension, revocation, and nonrenewal

The bill allows the Superintendent to suspend for a period not exceeding two years, by (1) revoking, or refusing to renew any license issued under the bill, (2) imposing a monetary fine against a licensee, or (3) both, if upon investigation and proof the Superintendent finds that the licensee has done certain actions as specified under the bill. The bill specifies procedures for a PBM when it receives a notice of the order of suspension. The bill specifies that any person whose license is revoked or whose application is denied pursuant to the bill is ineligible to apply for a PBM license for two years after the date the license is revoked or the application is denied.

The bill allows the Superintendent to impose a monetary fine against a licensee if, upon investigation and after notice and opportunity for a hearing, the Superintendent finds that the licensee has (1) committed fraud or engaged in any illegal or dishonest activity in connection with the administration of PBM services, or (2) violated any provisions governing PBMs under the bill or any rule adopted by the Superintendent pursuant to the bill. The bill requires a PBM licensed under the bill that is convicted of a felony to report the conviction to the Superintendent, including providing a copy of the judgment, the commitment order or the order imposing a community control sanction, and any other relevant documents.

Books and records

The bill allows the Superintendent to examine PBMs' books and records for certain purposes as specified under the bill beginning July 1, 2027. The bill requires PBMs to pay for all expenses associated with the examination functions authorized or required under the bill. All examination expenses received under the bill must be deposited into Fund 5540. The bill specifies that all information and data acquired by the Superintendent or the Department of Insurance under the bill is considered proprietary and confidential and is not a public record.

Written agreement

A person is prohibited from acting as a PBM on or after July 1, 2027, without first entering into a written agreement with a plan sponsor. The PBM must retain the written agreement as part of the PBM's official records for the duration of the agreement and for five years thereafter. The bill requires that such agreement must include certain provisions as specified by the bill. The bill requires PBMs to maintain certain records for the duration of the agreement with the plan sponsor, including providing and disclosing certain information to the plan sponsor. The bill also specifies requirements for a PBM associated with its agreement with an insurer or plan sponsor. The bill requires a PBM licensed under the bill, 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.

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

Other provision

The bill 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.

Fiscal effect

The bill may increase the Department of Insurance's administrative costs associated with licensing and oversight of PBMs. Currently, the Department's administrative cost is paid from the Department of Insurance Operating Fund (Fund 5540). The bill imposes a $2,000 fee for a PBM license application and a $3,000 fee for license renewal. The bill also allows the Superintendent to impose various monetary fines. All such fees and fines would be deposited into Fund 5540. Any fees collected under the bill may be sufficient to pay for such cost increases.

The bill has no direct fiscal impact to local governments. However, the bill's requirements may increase PBMs' administrative costs, which may have undetermined indirect fiscal effect on local governments' health benefit plans that contract with PBMs. Based on Health Insurance 2024: the Cost of Health Insurance in Ohio's Public Sector (PDF), a report published by the State Employment Relations Board, in 2024 about 78% of medical plans offered by public employers in the state were self-insured while the remaining 22% were fully insured. Self-insured public employers generally pay health benefits costs of employees and their beneficiaries directly. Under fully insured employer plans, employees would purchase insurance coverage from an insurance company.

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