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S.B. 9*

133rd General Assembly

Bill Analysis

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Version: As Re-Reported by House Insurance

Primary Sponsor: Sen. Huffman

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SUMMARY

Release of claims data

- Requires a health plan issuer, beginning in July 2020, to release the following to a requesting group policyholder: net claims data paid or incurred by month, monthly enrollment data, monthly prescription claims information, and, for paid claims over \$30,000, the amount paid toward each claim and claimant health condition.
- Defines a group policyholder as being a policyholder for a health insurance policy covering 50 or more employees who work an average of at least 30 hours per week during a calendar month, or at least 130 hours during the calendar month.
- Applies the disclosure requirement to claims data for the current, or immediately preceding, policy period, as requested by the policyholder.
- Provides protections from civil liability to the health plan issuer in relation to the disclosure of the claims data.
- Makes a series of violations of the bill's requirements that, taken together, constitute a pattern or practice, an unfair or deceptive practice in the business of insurance.

PEO federal tax identification number

- Allows a professional employer organization (PEO) to file federal payroll taxes entirely under a client employer's tax identification number.

* This analysis was prepared before the report of the House Insurance Committee appeared in the House journal. Note that the legislative history may be incomplete.

- Requires a PEO that elects to file federal payroll taxes entirely under the tax identification number of each client employer to remain liable for all wages and payroll taxes associated with shared employees and to include in the agreement between the PEO and each client employer a provision that reflects that liability.
- Prohibits a PEO from arguing in any forum that the use of a client employer's tax identification number absolves the PEO of liability for wages and payroll taxes associated with the client employer's shared employees.

DETAILED ANALYSIS

Release of claims data

Duty to disclose

The bill requires a health plan issuer (see "**Scope,**" below), upon request, but not more than once per calendar year per group policyholder, to release to each group policyholder monthly claims data relating to the policy within 30 business days after receiving the request. The data released must include all of the following:

1. The net claims paid or incurred by month;
2. If the group policyholder is an employer, the monthly enrollment data by employee only, employee and spouse, and employee and family. Otherwise, the monthly enrollment data must be provided and organized in a relevant manner.
3. Monthly prescription claims information; and
4. Paid claims over \$30,000, including a claim identifier other than the name and date of the occurrence, the amount paid toward each claim, and claimant health condition or diagnosis.

The claims data must be for the current, or immediately preceding, policy period, as requested by the policyholder.¹

Protections of the health plan issuer

A health plan issuer that discloses claims data under the bill may condition disclosure on an agreement that releases the health plan issuer from civil liability regarding the use of the data. Furthermore, the bill stipulates that a health plan issuer is also absolved of civil liability relating to subsequent use of the data. By authorizing disclosure of data, the bill does not authorize disclosure of the identity of a particular covered individual or any particular health insurance claim, condition, or diagnosis in violation of federal or state law.²

The bill entitles a group policyholder to receive protected information only after an authorized representative of the group policyholder certifies that (1) the health plan documents

¹ R.C. 3901.89(A)(2) and (B).

² R.C. 3901.89(C), (D), and (E).

comply with federal laws and regulations relating to disclosures³ and (2) the policyholder will safeguard and limit the disclosure of protected health information (individually identifiable health information). A group policyholder that fails to provide the appropriate certification is not entitled to receive protected health information described in (4) above, but may receive a report of claim information described in (1), (2), and (3), above.⁴

Enforcement

A health plan issuer that commits a series of violations of these requirements that, taken together, constitute a practice or pattern is deemed to have engaged in an unfair and deceptive act or practice in the business of insurance and is subject to sanctions under Ohio Insurance Law.⁵

Disclosure of other information

The bill specifies that it does not prohibit a health plan issuer from disclosing additional claims information beyond what the bill requires.⁶

The bill exempts disclosures made in accordance with the bill to a group policyholder from the prohibition against an insurance institution, agent, or insurance support organization disclosing personal or privileged information collected or received in connection with an insurance transaction.⁷

Scope

A “health plan issuer” under the bill is an entity subject to Ohio Insurance Laws or the Superintendent of Insurance’s jurisdiction that contracts, or offers to contract, to provide, or pay for, health care services under a health benefit plan. In addition to a sickness and accident insurer, health insuring corporation, fraternal benefit society, self-funded multiple employer welfare arrangement, and nonfederal, government health plan, the bill applies to a third party administrator to the extent that the benefits that it administers are subject to Ohio Insurance Laws and Rules or the Superintendent’s jurisdiction.⁸

Additionally, a “group policyholder” is a policyholder for a health insurance policy covering 50 or more employees who work an average of at least 30 hours per week during a calendar month, or at least 130 hours during a calendar month. The term includes the authorized representative of the group policyholder.⁹

³ See **COMMENT 1**, below.

⁴ R.C. 3901.89(F) and (G) and 45 C.F.R. 160.103 and 164.504(f), not in the bill.

⁵ R.C. 3901.89(H).

⁶ R.C. 3901.89(I).

⁷ R.C. 3904.13(O).

⁸ R.C. 3901.89, by reference to R.C. 3922.01(P), not in the bill.

⁹ R.C. 3901.89(A)(1) and (2).

PEO federal tax identification number

The bill allows a professional employer organization (PEO) to elect to file federal payroll taxes entirely under the PEO's tax identification number or entirely under the tax identification number of each client employer.¹⁰ Under the bill, all of the following apply to a PEO that elects to file federal payroll taxes entirely under the tax identification number of each client employer:

1. The PEO is liable for all wages and payroll taxes associated with shared employees, regardless of whether the PEO receives payment from the client employer.
2. The PEO is required to include in the PEO agreement between the PEO and each client employer a provision that reflects this liability.
3. The PEO is prohibited from arguing in any forum that the use of a client employer's tax identification number absolves the PEO of liability for wages and payroll taxes associated with shared employees of the client employer.¹¹

Continuing law requires a PEO to pay all related payroll taxes associated with a shared employee.¹² However, an administrative rule requires a PEO to report federal taxes under the PEO's tax identification number.¹³

Under continuing law, A PEO is a business entity that enters into an agreement with one or more client employers to share the responsibilities and liabilities of being an employer. A "client employer" is the business entity that enters into the agreement with a PEO to share employer responsibility and liability with the PEO. A "shared employee" is an individual assigned to a client employer on a permanent basis, not as a temporary supplement to the client employer's workforce, and who is employed by both a PEO and a client employer pursuant to a PEO agreement (the written agreement between a client employer and a PEO to share employer responsibilities and liabilities).¹⁴

Effective date

The bill's provisions relating to the release of group health plan information take effect July 1, 2020. The bill's provisions regarding PEOs take effect 90 days following the bill's effective date.¹⁵

¹⁰ See **COMMENT 2**, below.

¹¹ R.C. 4125.03(G).

¹² R.C. 4125.03(A)(2).

¹³ Ohio Administrative Code 4123-17-15(D)(2).

¹⁴ R.C. 4125.01, not in the bill.

¹⁵ Section 3.

COMMENT

1. The bill raises questions with regard to its interaction with the Federal Health Insurance Portability and Accountability Act of 1996 (HIPAA). HIPAA's privacy rule prohibits covered entities from disclosing protected health information. Generally speaking, HIPAA prohibits disclosures of protected health information to third parties unless those disclosures are made in relation to treatment, payment, or health care operations.¹⁶ It is unclear whether the disclosures made to an employer required by the bill would fall under any of these categories. Furthermore, federal rules prescribe only two situations in which the disclosure of protected health information from a health plan issuer to a plan sponsor is explicitly authorized:

- To obtain premium bids from health plans for providing health insurance;
- To modify, amend, or terminate the group health plan.¹⁷

Note, however, that the HIPAA privacy rule does not apply to information that does not identify or provide a reasonable basis to identify an individual.¹⁸ Accordingly, if a health plan issuer could disclose information in a way that was sufficiently anonymous, it would likely not be in conflict with HIPAA.

2. Federal payroll taxes are governed solely by federal law. Therefore, the bill's requirements with respect to the filing of and liability for federal payroll taxes may not be enforceable.

Moreover, federal law specifies three circumstances where a third party (such as a PEO) may file employment taxes for a client employer and share in the liability for those taxes:

- The third party is a certified professional employer organization (CPEO) under federal law;¹⁹
- The third party is an agent designated under federal law;²⁰
- The third party is a payor designated under federal law.²¹

¹⁶ 45 C.F.R. 164.502(a).

¹⁷ 45 C.F.R. 164.504(f)(1)(ii).

¹⁸ 45 C.F.R. 164.502(d)(2).

¹⁹ 26 United States Code 3511 and 7705.

²⁰ 26 Code of Federal Regulations (C.F.R.) 31.3504-1.

²¹ 26 C.F.R. 31.3504-2.

Under all of the above circumstances, federal law requires that the third party use its own tax identification number when filing federal payroll taxes for a client employer, not the client employer's number.²²

The three circumstances described above appear to be the only circumstances under federal law in which a third party is liable for a client employer's federal payroll taxes. Because a PEO under the bill would not be filing in accordance with those circumstances, a PEO may not be liable for the taxes under federal law. However, the bill creates PEO liability for a client employer's federal payroll taxes under state law.²³ That liability would be enforceable in state courts.

HISTORY

Action	Date
Introduced	02-12-19
Reported, S. Insurance & Financial Institutions	03-21-19
Passed Senate (31-0)	03-21-19
Reported, H. Insurance	05-07-19
Re-Reported, H. Insurance	---

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²² Internal Revenue Service, *CPEO Customers – What You Need to Know*, <https://www.irs.gov/tax-professionals/cpeo-customers-what-you-need-to-know>; Internal Revenue Service, *Third Party Payer Arrangements – Section 3504 Agents*, <https://www.irs.gov/government-entities/federal-state-local-governments/third-party-payer-arrangements-section-3504-agents>; 26 C.F.R. 31.3504-2(d)(1).

²³ R.C. 4125.03(G).