

2024 Regular Session

HOUSE BILL NO. 172

BY REPRESENTATIVE ECHOLS

INSURANCE/GROUP-STATE: Provides relative to disclosure and remittance to the state of revenues in excess of certain contractual amounts in certain circumstances for certain contractors with the state's Office of Group Benefits

1 AN ACT

2 To enact Subpart B of Part I of Chapter 12 of Title 42 of the Louisiana Revised Statutes of
3 1950, to be comprised of R.S. 42:813 through 817, and R.S. 49:955(B)(10.1),
4 relative to the Office of Group Benefits; to provide relative to requirements for
5 certain Office of Group Benefits contractors and subcontractors; to provide relative
6 to the powers and duties of the Office of Group Benefits; to provide definitions; to
7 provide exceptions; to provide relative to penalties; to provide with respect to
8 rulemaking; to provide for an effective date; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Subpart B of Part I of Chapter 12 of Title 42 of the Louisiana Revised
11 Statutes of 1950, comprised of R.S. 42:813 through 817, is hereby enacted to read as
12 follows:

13 SUBPART B. CONTRACTS AND REVENUES

14 §813. Definitions

15 A. For the purposes of this Subpart, the following terms shall have the
16 following meanings:

17 (1) "Administrator" means any entity contracted with the office to solicit or
18 effect coverage of, underwrite, collect charges or premiums from, or adjust or settle
19 claims in connection with life or health insurance coverage or annuities offered by

1 the office. The term "administrator" shall not include an employer performing any
2 such service on behalf of its employees, an independent consulting actuary
3 contracted with the office, or a pharmacy benefit manager.

4 (2) "Pharmacy benefit manager" means any person or business contracted
5 with the office to administer a prescription drug or device program of one or more
6 health plans on behalf of the office in accordance with a pharmacy benefit program.

7 (3) "Third-party administrator" means any person or entity that contracts
8 with an administrator to solicit or effect coverage of, underwrite, collect charges or
9 premiums from, or adjust or settle claims in connection with life or health insurance
10 coverage or annuities offered by the office. The term "third-party administrator"
11 shall not include an employer performing any such service on behalf of its
12 employees.

13 (4) "Third-party pharmacy benefit manager" means any agent or
14 representative of a pharmacy benefit manager hired or contracted by the pharmacy
15 benefit manager to assist in the administering of the office's drug program and any
16 wholly or partially owned or controlled subsidiary of a pharmacy benefit manager.

17 §814. Revenue reports

18 A.(1) Annually on or before April first, each administrator and pharmacy
19 benefit manager that had a contract with the office in the preceding calendar year and
20 each third-party administrator and third-party pharmacy benefit manager that had a
21 contract with an administrator or pharmacy benefit manager in the preceding
22 calendar year shall file a report with the office detailing its then-known revenues for
23 the preceding calendar year, by source.

24 (2) Annually on or before June thirtieth, each administrator, pharmacy
25 benefit manager, third-party administrator, and third-party pharmacy benefit
26 manager that was required to file a report pursuant to the provisions of Paragraph (1)
27 of this Subsection shall file a final report with the office updating and supplementing
28 as appropriate any information from its report filed pursuant to Paragraph (1) of this
29 Subsection to ensure that all revenues for the preceding calendar year are reported.

1 (3) The reports required pursuant to the provisions of this Section shall be
2 in the form and contain all other information as the office requires.

3 B. At the time a report required pursuant to the provisions of this Section is
4 filed with the office, the filer shall also submit copies of the report to the House and
5 Senate committees on insurance.

6 C. Notwithstanding any provision of law to the contrary, the office may
7 promulgate emergency rules for the initial implementation of this Section.

8 §815. Administrators

9 A. Each administrator contract with the office shall clearly establish an
10 administrative fee or a calculation for an administrative fee to be retained by the
11 administrator for performance of its duties. The administrator is prohibited from
12 retaining revenues directly attributable to the contract other than the administrative
13 fee. This prohibition includes revenues from rebates and other fee arrangements
14 with third-party administrators which revenues are directly attributable to the
15 administrator's contract with the office.

16 B.(1) Each year, within thirty days of filing the report required by R.S.
17 42:814(A)(1), the administrator shall remit to the office all other revenues collected
18 by the administrator in the calendar year covered by the report that are directly
19 attributable to its contract with the office and are not part of the administrative fee.
20 The office shall remit all such sums to the state treasury for deposit into the state
21 general fund.

22 (2) Each year, within thirty days of filing the report required by R.S.
23 42:814(A)(2), the administrator shall remit to the office any new revenues disclosed
24 on such report that are directly attributable to its contract with the office and are not
25 part of the administrative fee. The office shall remit all such sums to the state
26 treasury for deposit into the state general fund.

27 §816. Pharmacy benefit managers

28 A. Each pharmacy benefit manager contract with the office shall clearly
29 establish an administrative fee or a calculation for an administrative fee to be

1 retained by the pharmacy benefit manager for performance of its duties. The
2 pharmacy benefit manager is prohibited from retaining revenues directly attributable
3 to the contract other than the administrative fee. This prohibition includes revenues
4 from rebates and other fee arrangements with third-party pharmacy benefit
5 managers.

6 B.(1) Each year, within thirty days of filing the report required by R.S.
7 42:814(A)(1), a pharmacy benefit manager shall remit to the office all other revenues
8 collected by the pharmacy benefit manager in the calendar year covered by the report
9 that are directly attributable to its contract with the office and are not part of the
10 administrative fee. Within thirty days of receipt, the office shall remit all such sums
11 to the state treasury for deposit into the state general fund.

12 (2) Each year, within thirty days of filing the report required by R.S.
13 42:814(A)(2), the administrator shall remit to the office any new revenues disclosed
14 on such report that are directly attributable to its contract with the office and are not
15 part of the administrative fee. Within thirty days of receipt, the office shall remit all
16 such sums to the state treasury for deposit into the state general fund.

17 §817. Penalties

18 A. Each administrator and pharmacy benefit manager owes a duty of good
19 faith and fair dealing to the state. Each third-party administrator and third-party
20 pharmacy benefit manager owes a duty to disclose to the state revenues paid to an
21 administrator or pharmacy benefit manager. Failure to file a report required by this
22 Subpart or failure to accurately or completely disclose revenues on such report shall
23 constitute a breach of the duties imposed in this Section.

24 B. In addition to any damages, attorney fees, and costs for breach of the
25 imposed duty, including all costs associated with recovering owed amounts, the state
26 may be awarded penalties assessed against the breaching party in an amount not to
27 exceed the greater of the following:

1 (1) Two times the party's total rebates and fees received for the calendar year
2 for which the party failed to disclose, not limited to those rebates and fees
3 attributable to the contract with the office.

4 (2) Ten thousand dollars per day per violation for each day the party is found
5 to be in violation of the provisions of this Subpart.

6 Section 2. R.S. 49:955(B)(10.1) is hereby enacted to read as follows:

7 §955. Application of Chapter to rules and fees

8 * * *

9 B. The legislature further recognizes that there exist specific exceptions,
10 exemptions, and limitations to the laws pertaining to the adoption, amendment, or
11 repeal of any rule or the adoption, increasing, or decreasing of any fee throughout the
12 revised statutes and codes of this state. Such exceptions, exemptions, and limitations
13 are hereby continued in effect by incorporation into this Chapter by citation:

14 * * *

15 (10.1) R.S. 42:814(C).

16 * * *

17 Section 3. The Louisiana State Law Institute is hereby authorized and directed to
18 redesignate R.S. 42:801 through 812 of the Louisiana Revised Statutes of 1950 as "Subpart
19 A. General Provisions".

20 Section 4. This Act shall become effective on July 1, 2024; if vetoed by the governor
21 and subsequently approved by the legislature, this Act shall become effective on July 1,
22 2024, or on the day following such approval by the legislature, whichever is later.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 172 Original

2024 Regular Session

Echols

Abstract: Requires certain contractors with the state's office of group benefits (OGB) to annually disclose their known revenues and to remit certain revenue amounts back to the state for deposit into the state treasury.

DEFINITIONS

Proposed law defines the following terms for the purposes of proposed law:

- (1) "Administrator" means any entity contracted with OGB to solicit or effect coverage of, underwrite, collect charges or premiums from, or adjust or settle claims in connection with life or health insurance coverage or annuities offered by OGB. The term "administrator" shall not include an employer performing any such service on behalf of its employees, an independent consulting actuary contracted with the office, or a pharmacy benefit manager.
- (2) "Pharmacy benefit manager" means any person or business contracted with OGB to administer a prescription drug or device program of one or more health plans on behalf of the office in accordance with a pharmacy benefit program.
- (3) "Third-party administrator" means any person or entity that contracts with an administrator to solicit or effect coverage of, underwrite, collect charges or premiums from, or adjust or settle claims in connection with life or health insurance coverage or annuities offered by OGB. The term "third-party administrator" shall not include an employer performing any such service on behalf of its employees.
- (4) "Third-party pharmacy benefit manager" means any agent or representative of a pharmacy benefit manager hired or contracted by the pharmacy benefit manager to assist in the administering of OGB's drug program and any wholly or partially owned or controlled subsidiary of a pharmacy benefit manager.

ANNUAL FINANCIAL REPORTS

Proposed law requires each administrator and pharmacy benefit manager that had a contract with the office in the preceding calendar year and each third-party administrator and third-party pharmacy benefit manager that had a contract with an administrator or pharmacy benefit manager in the preceding calendar year to file a report with OGB detailing its then-known revenues for the preceding calendar year, by source. Further provides that each such party file a final report each year no later than June 30th, updating as appropriate any information in its earlier filing to ensure that all revenues are reported. Proposed law requires such reports to be in the form and contain all other information as OGB requires. Additionally requires the filer to submit copies of each of its reports to the House and Senate committees on insurance at the time it files its report with OGB.

REMITTANCE OF REVENUES IN EXCESS OF CONTRACT AMOUNTS

Proposed law requires each OGB administrator and pharmacy benefit manager contract to establish an administrative fee or a calculation of an administrative fee to be retained by the contractor for performance of its duties. Prohibits the administrator or pharmacy benefit manager from retaining revenues attributable to its contract with OGB other than this fee.

This prohibition includes revenues from rebates and other fee arrangements with third-party administrators and third-party pharmacy benefit managers which revenues are directly attributable to the contract with the office.

Proposed law further requires each administrator and pharmacy benefit manager to remit to OGB all other revenues collected by the contractor in the calendar year covered by the report that are directly attributable to its contract with OGB and are not part of its administrative fee. Such monies are to be remitted within 30 days of filing the first report required by proposed law. Further requires that within 30 days of filing the final report required by proposed law, the contractor must remit to OGB any new revenues disclosed on such report that are not part of the administrative fee. Any monies collected by OGB pursuant to proposed law are to be remitted by OGB to the state treasury for deposit into the state general fund.

PENALTIES

Proposed law establishes a duty of good faith and fair dealing on administrators and pharmacy benefit managers contracted with OGB. Further establishes on third-party administrators and third-party pharmacy benefit managers a duty to disclose to the state revenues paid to an administrator or pharmacy benefit manager. Further provides that failure to file a report required by proposed law or failure to accurately or completely disclose revenues on such a required report constitutes a breach of the duties imposed in proposed law.

Proposed law provides that, in addition to damages, attorneys fees, and costs for breach of the imposed duty, including all costs associated with recovering owed amounts, the state may be awarded penalties assessed against the breaching party in an amount not to exceed the greater of the following:

- (1) Two times the party's total rebates and fees received for the calendar year for which the party failed to disclose, not limited to those rebates and fees attributable to the contract with the office.
- (2) \$10,000 per day per violation for each day the party is found to be in violation of the provisions of this Subpart.

ADMINISTRATIVE PROCEDURE ACT

Present law establishes the Administrative Procedure Act (APA) and sets for the requirements that an executive branch unit (board, commission, department, agency, etc.) must follow in order to promulgate rules regulating its conduct.

Present law sets forth the criteria pursuant to which an emergency rule may be promulgated. Proposed law creates an exception to this criteria for OGB to promulgate emergency rules for initial implementation of proposed law.

Proposed law directs the La. State Law Institute to redesignate present law (R.S. 42:801 through 812) as Subpart A of Part I of Chapter 12 of Title 42.

Effective July 1, 2024.

(Adds R.S. 42:813-817 and R.S. 49:955(B)(10.1))