

2024 Regular Session

HOUSE BILL NO. 172

BY REPRESENTATIVE ECHOLS

INSURANCE/GROUP-STATE: Provides relative to disclosure and remittance 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; to provide relative to the powers and
6 duties of the Office of Group Benefits; to provide definitions; to provide exceptions;
7 to provide relative to penalties; to provide with respect to rulemaking; to provide for
8 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 adjust or
18 settle claims in connection with health coverage offered by the office. The term
19 "administrator" shall not include an employer performing any such service on behalf

1 of its employees, an independent consulting actuary contracted with the office, or a
2 pharmacy benefit manager.

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

6 (3) "Administrative fee" means the sole compensation the administrator or
7 pharmacy benefit manager receives under the contract. The administrative fee
8 includes all services related to the contract including but not limited to appeals,
9 clinical programs, and other communications, eligibility maintenance, explanation
10 of benefits, formulary customizations, member grievances and call centers, on-site
11 audits and surveys, prior authorizations and step therapy, trend management, and
12 benchmark reporting and transaction fees. The administrative fee does not include
13 pass-through claims.

14 (4) "Revenues" means all financial benefits an administrator or pharmacy
15 benefit manager receives related to utilization or enrollment in programs offered by
16 the office. These include but are not limited to access fees, market share fees,
17 formulary access fees, inflation protection and penalty payments, and marketing
18 grants from pharmaceutical manufacturers, wholesalers, and data warehouse
19 vendors. "Revenues" also means any financial benefit received by an administrator
20 or pharmacy benefit manager attached to a rebate.

21 §814. Revenue reports

22 A.(1) Annually on or before April first, each administrator and pharmacy
23 benefit manager that had a contract with the office in the preceding calendar year
24 shall file a report with the office detailing any known revenues outside the
25 administration fee related to their current contract with the office for the preceding
26 calendar year, by source.

27 (2) Annually on or before June thirtieth, each administrator and pharmacy
28 benefit manager that was required to file a report pursuant to the provisions of
29 Paragraph (1) of this Subsection shall file a final report with the office updating and

1 supplementing as appropriate any information from its report filed pursuant to
2 Paragraph (1) of this Subsection to ensure that all revenues for the preceding
3 calendar year are reported.

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

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

9 §815. Administrators

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

17 B.(1) Each year, within thirty days of filing the report required by R.S.
18 42:814(A)(1), the administrator shall remit to the office all revenues that are directly
19 attributable to its contract with the office, notwithstanding the administrative fee, that
20 were collected in the calendar year covered by the report.

21 (2) Each year, within thirty days of filing the report required by R.S.
22 42:814(A)(2), the administrator shall remit to the office any new revenues disclosed
23 on such report that are directly attributable to its contract with the office,
24 notwithstanding the administrative fee.

25 §816. Pharmacy benefit managers

26 A. Each pharmacy benefit manager contract with the office shall clearly
27 establish an administrative fee or a calculation for an administrative fee to be
28 retained by the pharmacy benefit manager for performance of its duties. The
29 pharmacy benefit manager is prohibited from retaining revenues directly attributable

1 to the contract other than the administrative fee. This prohibition includes revenues
2 from rebates and other fee arrangements with third-party pharmacy benefit managers
3 which revenues are directly attributable to the pharmacy benefit manager's contract
4 with the office.

5 B.(1) Each year, within thirty days of filing the report required by R.S.
6 42:814(A)(1), a pharmacy benefit manager shall remit to the office all revenues that
7 are directly attributable to its contract with the office, notwithstanding the
8 administrative fee, that were collected by the pharmacy benefit manager in the
9 calendar year covered by the report.

10 (2) Each year, within thirty days of filing the report required by R.S.
11 42:814(A)(2), the pharmacy benefit manager shall remit to the office revenues
12 disclosed on such report that are directly attributable to its contract with the office,
13 notwithstanding the administrative fee.

14 §817. Penalties

15 A. Each administrator and pharmacy benefit manager owes a duty of good
16 faith and fair dealing to the office. Failure to file a report required by this Subpart
17 or failure to accurately or completely disclose revenues on such report shall
18 constitute a breach of the duties imposed in this Section.

19 B. In addition to any damages, attorney fees, and costs for breach of the
20 imposed duty, including all costs associated with recovering owed amounts, the
21 office may be awarded penalties assessed against the breaching party in an amount
22 not to exceed two times the party's revenues received for the calendar year for which
23 the party failed to disclose with the office.

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

25 §955. Application of Chapter to rules and fees

26 * * *

27 B. The legislature further recognizes that there exist specific exceptions,
28 exemptions, and limitations to the laws pertaining to the adoption, amendment, or
29 repeal of any rule or the adoption, increasing, or decreasing of any fee throughout the

1 revised statutes and codes of this state. Such exceptions, exemptions, and limitations
2 are hereby continued in effect by incorporation into this Chapter by citation:

3 * * *

4 (10.1) R.S. 42:814(C).

5 * * *

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

9 Section 4. This Act shall become effective on July 1, 2024; if vetoed by the governor
10 and subsequently approved by the legislature, this Act shall become effective on July 1,
11 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 Engrossed

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 OGB.

DEFINITIONS

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

- (1) "Administrator" means any entity contracted with OGB to adjust or settle claims in connection with health coverage 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 entity 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) "Administrative fee" means the sole compensation the administrator or pharmacy benefit manager receives under the contract. The administrative fee includes all services related to the contract including but not limited to appeals, clinical programs, and other communications, eligibility maintenance, explanation of benefits, formulary customizations, member grievances and call centers, on-site audits and surveys, prior authorizations and step therapy, trend management, and benchmark reporting and transaction fees. The administrative fee does not include pass-through claims.

- (4) "Revenues" means all financial benefits an administrator or pharmacy benefit manager receives related to utilization or enrollment in programs offered by the office. These include but are not limited to access fees, market share fees, formulary access fees, inflation protection and penalty payments, and marketing grants from pharmaceutical manufacturers, wholesalers, and data warehouse vendors. "Revenues" also means any financial benefit received by an administrator or pharmacy benefit manager attached to a rebate."

ANNUAL FINANCIAL REPORTS

Proposed law requires each administrator and pharmacy benefit manager that had a contract with the office in the preceding calendar year to file a report with OGB detailing any known revenues, aside from its administrative fee, 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. 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, notwithstanding the administrative fee, that were collected in the calendar year covered by the report. 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, notwithstanding the administrative fee.

PENALTIES

Proposed law establishes a duty of good faith and fair dealing on administrators and pharmacy benefit managers contracted with OGB. 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, OGB may be awarded penalties assessed against the breaching party in an amount not to exceed two times the party's revenues received for the calendar year for which the party failed to disclose with the office.

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))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Appropriations to the original bill:

1. Modify definitions of "administrator" and "pharmacy benefit manager".
2. Delete definitions of "third-party administrator" and "third-party pharmacy benefit manager" and add definitions of "administrative fee" and "revenues".
3. Remove third-party administrators and third-party pharmacy benefit managers from the bill.
4. Change penalties levied for failure to comply with proposed law ~~from~~ the greater of two times the party's total rebates and fees for the calendar year for which the party failed to disclose or \$10,000 per day per violation for each day the party is found to be in violation of proposed law ~~to~~ two times the party's revenues received for the calendar year for which the party failed to disclose.
5. Removes from proposed law requirement that OGB remit to the state treasury revenues received from an administrator or pharmacy benefit manager.