
DIGEST

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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.