

1-1 By: Oliverson, et al. (Senate Sponsor - Hughes) H.B. No. 1763  
 1-2 (In the Senate - Received from the House April 27, 2021;  
 1-3 May 3, 2021, read first time and referred to Committee on Business  
 1-4 & Commerce; May 10, 2021, reported favorably by the following vote:  
 1-5 Yeas 7, Nays 0; May 10, 2021, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10	X			
1-11			X	
1-12	X			
1-13	X			
1-14			X	
1-15	X			
1-16	X			

1-17 A BILL TO BE ENTITLED  
 1-18 AN ACT

1-19 relating to the contractual relationship between a pharmacist or  
 1-20 pharmacy and a health benefit plan issuer or pharmacy benefit  
 1-21 manager.

1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-23 SECTION 1. Chapter 1369, Insurance Code, is amended by  
 1-24 adding Subchapter L to read as follows:

1-25 SUBCHAPTER L. CONTRACTS WITH PHARMACISTS AND PHARMACIES

1-26 Sec. 1369.551. DEFINITIONS. In this subchapter:

1-27 (1) "Pharmacy benefit manager" has the meaning  
 1-28 assigned by Section 4151.151.

1-29 (2) "Pharmacy benefit network" means a network of  
 1-30 pharmacies that have contracted with a pharmacy benefit manager to  
 1-31 provide pharmacist services to enrollees.

1-32 (3) "Pharmacy services administrative organization"  
 1-33 means an entity that contracts with a pharmacist or pharmacy to  
 1-34 conduct on behalf of the pharmacist or pharmacy the pharmacist's or  
 1-35 pharmacy's business with a third-party payor, including a pharmacy  
 1-36 benefit manager, in connection with pharmacy benefits and to assist  
 1-37 the pharmacist or pharmacy by providing administrative services,  
 1-38 including negotiating, executing, and administering a contract  
 1-39 with a third-party payor and communicating with the third-party  
 1-40 payor in connection with a contract or pharmacy benefits.

1-41 Sec. 1369.552. APPLICABILITY OF SUBCHAPTER. (a) This  
 1-42 subchapter applies only to a health benefit plan that provides  
 1-43 benefits for medical or surgical expenses incurred as a result of a  
 1-44 health condition, accident, or sickness, including an individual,  
 1-45 group, blanket, or franchise insurance policy or insurance  
 1-46 agreement, a group hospital service contract, or an individual or  
 1-47 group evidence of coverage or similar coverage document that is  
 1-48 offered by:

1-49 (1) an insurance company;

1-50 (2) a group hospital service corporation operating  
 1-51 under Chapter 842;

1-52 (3) a health maintenance organization operating under  
 1-53 Chapter 843;

1-54 (4) an approved nonprofit health corporation that  
 1-55 holds a certificate of authority under Chapter 844;

1-56 (5) a multiple employer welfare arrangement that holds  
 1-57 a certificate of authority under Chapter 846;

1-58 (6) a stipulated premium company operating under  
 1-59 Chapter 884;

1-60 (7) a fraternal benefit society operating under  
 1-61 Chapter 885;

1-62 (8) a Lloyd's plan operating under Chapter 941; or

1-63 (9) an exchange operating under Chapter 942.

2-1           (b) Notwithstanding any other law, this subchapter applies  
2-2 to:  
2-3           (1) a small employer health benefit plan subject to  
2-4 Chapter 1501, including coverage provided through a health group  
2-5 cooperative under Subchapter B of that chapter;  
2-6           (2) a standard health benefit plan issued under  
2-7 Chapter 1507;  
2-8           (3) health benefits provided by or through a church  
2-9 benefits board under Subchapter I, Chapter 22, Business  
2-10 Organizations Code;  
2-11           (4) group health coverage made available by a school  
2-12 district in accordance with Section 22.004, Education Code;  
2-13           (5) a regional or local health care program operated  
2-14 under Section 75.104, Health and Safety Code; and  
2-15           (6) a self-funded health benefit plan sponsored by a  
2-16 professional employer organization under Chapter 91, Labor Code.  
2-17           (c) This subchapter does not apply to an issuer or provider  
2-18 of health benefits under or a pharmacy benefit manager  
2-19 administering pharmacy benefits under a workers' compensation  
2-20 insurance policy or other form of providing medical benefits under  
2-21 Title 5, Labor Code.  
2-22           Sec. 1369.553. REDUCTION OF CERTAIN CLAIM PAYMENT AMOUNTS  
2-23 PROHIBITED. (a) A health benefit plan issuer or pharmacy benefit  
2-24 manager may not directly or indirectly reduce the amount of a claim  
2-25 payment to a pharmacist or pharmacy after adjudication of the claim  
2-26 through the use of an aggregated effective rate, quality assurance  
2-27 program, other direct or indirect remuneration fee, or otherwise,  
2-28 except in accordance with an audit performed under Subchapter F.  
2-29           (b) Nothing in this section prohibits a health benefit plan  
2-30 issuer or pharmacy benefit manager from increasing a claim payment  
2-31 amount after adjudication of the claim.  
2-32           Sec. 1369.554. REIMBURSEMENT OF AFFILIATED AND  
2-33 NONAFFILIATED PHARMACISTS AND PHARMACIES. (a) In this section:  
2-34           (1) "Affiliated pharmacist or pharmacy" means a  
2-35 pharmacist or pharmacy that directly, or indirectly through one or  
2-36 more intermediaries, controls or is controlled by, or is under  
2-37 common control with, a pharmacy benefit manager.  
2-38           (2) "Nonaffiliated pharmacist or pharmacy" means a  
2-39 pharmacist or pharmacy that does not directly, or indirectly  
2-40 through one or more intermediaries, control and is not controlled  
2-41 by or under common control with a pharmacy benefit manager.  
2-42           (b) A pharmacy benefit manager may not pay an affiliated  
2-43 pharmacist or pharmacy a reimbursement amount that is more than the  
2-44 amount the pharmacy benefit manager pays a nonaffiliated pharmacist  
2-45 or pharmacy for the same pharmacist service.  
2-46           Sec. 1369.555. NETWORK CONTRACT FEE SCHEDULE. A pharmacy  
2-47 benefit network contract must specify or reference a separate fee  
2-48 schedule. Unless otherwise available in the contract, the fee  
2-49 schedule must be provided electronically in an easily accessible  
2-50 and complete spreadsheet format and, on request, in writing to each  
2-51 contracted pharmacist and pharmacy. The fee schedule must  
2-52 describe:  
2-53           (1) specific services or procedures that the  
2-54 pharmacist or pharmacy may deliver and the amount of the  
2-55 corresponding payment;  
2-56           (2) a methodology for calculating the amount of the  
2-57 payment based on a published fee schedule; or  
2-58           (3) any other reasonable manner that provides an  
2-59 ascertainable amount for payment for services.  
2-60           Sec. 1369.556. DISCLOSURE OF PHARMACY SERVICES  
2-61 ADMINISTRATIVE ORGANIZATION CONTRACT. A pharmacist or pharmacy  
2-62 that is a member of a pharmacy services administrative organization  
2-63 that enters into a contract with a health benefit plan issuer or  
2-64 pharmacy benefit manager on the pharmacist's or pharmacy's behalf  
2-65 is entitled to receive from the pharmacy services administrative  
2-66 organization a copy of the contract provisions applicable to the  
2-67 pharmacist or pharmacy, including each provision relating to the  
2-68 pharmacist's or pharmacy's rights and obligations under the  
2-69 contract.  
2-70           Sec. 1369.557. DELIVERY OF DRUGS. (a) Except in a case in  
2-71 which the health benefit plan issuer or pharmacy benefit manager

3-1 makes a credible allegation of fraud against the pharmacist or  
3-2 pharmacy and provides reasonable notice of the allegation and the  
3-3 basis of the allegation to the pharmacist or pharmacy, a health  
3-4 benefit plan issuer or pharmacy benefit manager may not as a  
3-5 condition of a contract with a pharmacist or pharmacy prohibit the  
3-6 pharmacist or pharmacy from:

3-7 (1) mailing or delivering a drug to a patient on the  
3-8 patient's request, to the extent permitted by law; or

3-9 (2) charging a shipping and handling fee to a patient  
3-10 requesting a prescription be mailed or delivered if the pharmacist  
3-11 or pharmacy discloses to the patient before the delivery:

3-12 (A) the fee that will be charged; and

3-13 (B) that the fee may not be reimbursable by the  
3-14 health benefit plan issuer or pharmacy benefit manager.

3-15 (b) A pharmacist or pharmacy may not charge a health benefit  
3-16 plan issuer or pharmacy benefit manager for the delivery of a  
3-17 prescription drug as described by this section unless the charge is  
3-18 specifically agreed to by the health benefit plan issuer or  
3-19 pharmacy benefit manager.

3-20 Sec. 1369.558. PROFESSIONAL STANDARDS AND SCOPE OF PRACTICE  
3-21 REQUIREMENTS. A health benefit plan issuer or pharmacy benefit  
3-22 manager may not as a condition of a contract with a pharmacist or  
3-23 pharmacy:

3-24 (1) require pharmacist or pharmacy accreditation  
3-25 standards or recertification requirements inconsistent with, more  
3-26 stringent than, or in addition to federal and state requirements;  
3-27 or

3-28 (2) prohibit a licensed pharmacist or pharmacy from  
3-29 dispensing any drug that may be dispensed under the pharmacist's or  
3-30 pharmacy's license unless:

3-31 (A) applicable state or federal law prohibits the  
3-32 pharmacist or pharmacy from dispensing the drug; or

3-33 (B) the manufacturer of the drug requires that a  
3-34 pharmacist or pharmacy possess one or more accreditations or  
3-35 certifications to dispense the drug and the pharmacist or pharmacy  
3-36 does not meet the requirement.

3-37 Sec. 1369.559. RETALIATION PROHIBITED. (a) A pharmacy  
3-38 benefit manager may not retaliate against a pharmacist or pharmacy  
3-39 based on the pharmacist's or pharmacy's exercise of any right or  
3-40 remedy under this chapter. Retaliation prohibited by this section  
3-41 includes:

3-42 (1) terminating or refusing to renew a contract with  
3-43 the pharmacist or pharmacy;

3-44 (2) subjecting the pharmacist or pharmacy to increased  
3-45 audits; or

3-46 (3) failing to promptly pay the pharmacist or pharmacy  
3-47 any money owed by the pharmacy benefit manager to the pharmacist or  
3-48 pharmacy.

3-49 (b) For purposes of this section, a pharmacy benefit manager  
3-50 is not considered to have retaliated against a pharmacist or  
3-51 pharmacy if the pharmacy benefit manager:

3-52 (1) takes an action in response to a credible  
3-53 allegation of fraud against the pharmacist or pharmacy; and

3-54 (2) provides reasonable notice to the pharmacist or  
3-55 pharmacy of the allegation of fraud and the basis of the allegation  
3-56 before taking the action.

3-57 Sec. 1369.560. WAIVER PROHIBITED. The provisions of this  
3-58 subchapter may not be waived, voided, or nullified by contract.

3-59 SECTION 2. The change in law made by this Act applies only  
3-60 to a contract entered into or renewed on or after the effective date  
3-61 of this Act. A contract entered into or renewed before the  
3-62 effective date of this Act is governed by the law as it existed  
3-63 immediately before the effective date of this Act, and that law is  
3-64 continued in effect for that purpose.

3-65 SECTION 3. This Act takes effect September 1, 2021.

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