

BILL ANALYSIS

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AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Pharmacy benefit managers (PBMs) are unregulated businesses that contract with health benefit plans or employers to provide services related to prescription drug coverage. PBM services may include one or more of the following: claims processing, contracting with pharmacists, negotiating with drug manufacturers, establishing drug formularies, providing mail-order drug services, establishing cost-sharing provisions, and providing enrollee prescription drug cards and other services. If unregulated, PBM operations can adversely affect the health and welfare of covered beneficiaries and the price of prescription drugs for employers, enrollees and state programs. Due to the unregulated PBM practice, PSMs are not obligated to adhere to common regulatory standards governing consumer protection and fair business practices.

As proposed, S.B. 749 requires PBMs that contract with state-funded health care programs to obtain a certificate of authority from the Texas Department of Insurance (TDI) to ensure that PBMs are not practicing insurance without sufficient oversight, controls and resources. The bill's provisions also would prohibit PBMs from providing certain services related to the practice of pharmacy without a pharmacy license. S.B. 749 would require TDI to establish procedures to resolve complaints that providers, enrollees or others may have with a PBM's operations. S.B. 749 also requires the establishment of standard contract language that addresses pharmacy payment and includes other provisions related to claims adjustment procedures and the ability of pharmacists to assist an insured or file a complaint against a PBM's decision.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of insurance in SECTION 1 (Sections 4154.002, 4154.104, 4154.106, 4154.151, 4154.153, and 4154.301, Insurance Code) and SECTION 3 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle D, Title 13, Insurance Code, by adding Chapter 4154, as follows:

CHAPTER 4154. PHARMACY BENEFIT MANAGERS FOR STATE-FUNDED PROGRAMS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 4154.001. DEFINITIONS. Defines "board," "claims processing service," "common controlling interest," "controlling interest," "labor union," "maintenance drug," "multi-source drug," "other prescription drug or device service," "person," "pharmacist," "pharmacist's service," "pharmacy," "pharmacy benefit manager," "single source drug," "state-funding health care program," "and "usual and customary price."

Sec. 4154.002. RULES. Requires the commissioner of insurance (commissioner) to adopt rules and standards as necessary to implement this chapter.

Sec. 4154.003. APPLICABILITY OF CHAPTER; APPLICABILITY OF OTHER PROVISIONS OF CODE. (a) Provides that this chapter applies only to a pharmacy benefit manager that provides to a state-funded health care program claims processing services, other prescription drug or device services, or both services.

(b) Provides that a pharmacy benefit manager subject to this chapter is also subject to Section 823.457 (Long Arm Jurisdiction; Service of Process); Subchapter H (Certain Proceedings; Bond Requirements) of Chapter 101, Chapter 541 (Unfair Methods of Competition and Unfair or Deceptive Acts of Practices); Subchapter A (Unfair Claim Settlement Practices) of Chapter 542; and Chapter 804 (Service of Process).

[Reserves Sections 4154.004-4154.050 for expansion.]

SUBCHAPTER B. CERTIFICATE OF AUTHORITY

Sec. 4154.051. **CERTIFICATE OF AUTHORITY REQUIRED.** (a) Prohibits a person from acting as or representing that the person is a pharmacy benefit manager for a state-funding health care program in this state unless the person is covered by and is engaging in business under a certificate of authority issued by the commissioner under this chapter.

(b) Provides that a person that holds a certificate of authority under this chapter is not also required to hold a certificate of authority as an administrator under Chapter 4151 (Third-Party Administrators) to act as a pharmacy benefit manager in this state, but is required to comply with Subchapter D (Pharmacy Benefit Plans), Chapter 4151.

Sec. 4154.052. **APPLICATION REQUIREMENTS.** (a) Requires an applicant for a certificate of authority under this chapter to submit an application to the Texas Department of Insurance (department) in the manner described by the commissioner.

(b) Requires an application under this chapter to include certain information and be accompanied by a \$300 application fee.

Sec. 4154.053. **FIDELITY BOND REQUIRED.** Requires the applicant to obtain a fidelity bond before the commissioner issues the certificate of authority, if said application is approved. Sets forth requirements for an applicant to obtain and maintain a fidelity bond under this chapter.

Sec. 4154.054. **ISSUANCE OF CERTIFICATE; DURATION OF CERTIFICATE; RENEWAL.** (a) Requires the commissioner to issue a certificate of authority to an applicant that complies with this chapter.

(b) Provides that a pharmacy benefit manager for a state-funded health care program is required to hold only one certificate of authority issued under this chapter.

(c) Provides that a certificate of authority issued under this chapter is valid for two years from the date of issuance, and is authorized to be renewed on submission of a renewal application to the department accompanied by a \$300 renewal fee.

[Reserves Sections 4154.055-4154.100 for expansion.]

SUBCHAPTER C. DEPARTMENT REGULATION OF PHARMACY BENEFIT MANAGERS

Sec. 4154.101. **EXAMINATION OF PHARMACY BENEFIT MANAGER.** (a) Authorizes the commissioner to examine a pharmacy benefit manager with regard to the manager's business in this state for a state-funded health care program.

(b) Requires an examination under this section to include a review of certain documents.

(c) Authorizes the commissioner to require an on-site evaluation. Requires an examiner to notify the pharmacy benefit manager of the date and estimated time

of the examination before an examiner enters the property of the pharmacy benefit manager. Requires the examiner to comply with any operational rules of the pharmacy benefit manager while on the pharmacy benefit manager's property.

(d) Requires the pharmacy benefit manager to pay a fee to the department not to exceed \$500 to cover the costs of an examination.

Sec. 4154.102. ANNUAL STATEMENT. (a) Requires each pharmacy benefit manager subject to this chapter to file with the department an annual statement not later than March 1 of each year.

(b) Sets forth requirements for the submission of the annual statement.

Sec. 4154.103. EXTENSION OF FILING PERIOD. Authorizes the commissioner to extend, for a period not to exceed 60 days, the time prescribed for the filing of an annual statement or other report or exhibit by a pharmacy benefit manager subject to this chapter for good cause.

Sec. 4154.104. ASSESSMENT. (a) Requires the commissioner to annually assess each pharmacy benefit manager holding a certificate of authority for the department's expenses in administering this chapter, in addition to the fees required by this chapter.

(b) Requires the commissioner to proportionately assess each pharmacy benefit manager under Subsection (a) for its share of the total expenses incurred by the department in administering this chapter in proportion to the business done by all pharmacy benefit managers in the state providing services for the state-funded health care programs, as determined by the commissioner rule.

Sec. 4154.105. CHANGE IN OWNERSHIP. Requires a pharmacy benefit manager subject to this chapter to notify the department in writing of any material change in the ownership of the pharmacy benefit manager not later than the fifth day after the effective date of the change.

Sec. 4154.106. ARBITRATION. (a) Requires the commissioner, by rule, to establish a procedure that uses arbitration for resolving disputes arising under contracts entered into by pharmacy benefit managers with state-funded health care programs.

(b) Requires the arbitration procedure to include participation by certain entities.

[Reserves Sections 4154.107-4154.150 for expansion.]

SUBCHAPTER D. CONTRACT ISSUES

Sec. 4154.151. STANDARD CONTRACT FORMS REQUIRED. (a) Requires the commissioner, in consultation with the contract advisory panel, to adopt rules that establish standard contract forms for use by pharmacy benefit managers in entering into contracts with pharmacies and pharmacists and this state, insurers, and health maintenance organizations (HMO) that relate to the operation of a state-funded health care program.

(b) Requires a pharmacy benefit manager that enters into a contract to use a contract form adopted by the commissioner, except as provided by Section 4154.153.

(c) Prohibits the terms of a contract form adopted under this section and entered into by a pharmacy benefit manager from being subsequently modified unless the modification is agreed to by the pharmacy benefit manager and the pharmacy or the pharmacist or the state, the insurer, or the HMO.

Sec. 4154.152. PHARMACY BENEFIT MANAGER CONTRACT ADVISORY PANEL. (a) Provides that the pharmacy benefit manager contract advisory panel is

established as an advisory body to the commissioner. Requires the advisory panel to advise and make recommendations to the commissioner regarding the adoption of standard contract forms.

- (b) Sets forth the composition of the advisory panel.
- (c) Sets forth prohibitions for a public member of the advisory panel.
- (d) Provides that members of the advisory panel serve without compensation and at the will of the commissioner.
- (e) Provides that Section 2110.008 (Duration of Advisory Committees), Government Code, does not apply to the advisory panel.

Sec. 4154.153. COMMISSIONER APPROVAL OF CONTRACT FORMS. (a) Requires a pharmacy benefit manager to file the form with the department not later than the 30th day before the date on which the pharmacy benefit manager proposes to use a form in this state for a contract entered into with a pharmacy or pharmacist to provide services in this state for a state-funded health care program.

- (b) Provides that each contract form is subject to approval by the commissioner and that, if the commissioner fails to approve a form before the 31st day after the date on which the form was received by the department, the form is deemed disapproved.
- (c) Requires the commissioner, by rule, to develop formal criteria for the approval and disapproval of pharmacy benefit manager contract forms under this section.

Sec. 4154.154. CONTRACT TERMS. (a) Requires each contract entered into by a pharmacy benefit manager under this chapter to include certain provisions.

- (b) Sets forth prohibitions for a pharmacy benefit manager contract.

[Reserves Sections 4154.155-4154.200 for expansion.]

SUBCHAPTER E. POWERS AND DUTIES OF PHARMACY BENEFIT MANAGERS

Sec. 4154.201. MEDICATION REIMBURSEMENT COSTS; INDEX. (a) Requires each pharmacy benefit manager subject to this chapter to use a current nationally recognized benchmark as the basis for reimbursements for medications and products dispensed by pharmacies and pharmacists with whom the pharmacy benefit manager contracts.

- (b) Requires the pharmacy benefit manager to use as an index the average wholesale price as listed in certain publications for brand-name single source drugs and brand-name multi-source drugs.
- (c) Requires maximum allowable costs for generic multi-source drugs to be established by referencing the baseline price, as listed in certain publications.
- (d) Authorizes the commissioner, if one of the aforementioned publications ceases to be adequate, to adopt any other current nationally recognized benchmark that is established and published by a person with whom pharmacy benefit managers do not have a financial or business interest or connection.
- (e) Requires a product to meet certain requirements to be eligible to be reimbursed through a maximum allowable cost price methodology.

(f) Requires a generic multi-source drug product that does not have a baseline price to be treated as a brand-name single source drug for the purpose of valuing reimbursement.

[Reserves Sections 4154.202-4154.250 for expansion.]

SUBCHAPTER F. PROHIBITED ACTIONS BY PHARMACY BENEFIT MANAGERS

Sec. 4154.251. CERTAIN RETROACTIVE CLAIM ADJUSTMENTS PROHIBITED.

(a) Prohibits a pharmacy benefit manager subject to this chapter from retroactively denying a claim paid by the pharmacy benefit manager for a pharmacist's services or adjusting the claim after adjudication of the claim unless certain circumstances apply.

(b) Prohibits a pharmacy benefit manager from retroactively reversing an acknowledgement of eligibility.

Sec. 4154.252. DECEPTIVE ADVERTISEMENTS OR OFFERS PROHIBITED.

Prohibits a pharmacy benefit manager, or a representative of the pharmacy benefit manager, from causing or knowingly permitting the use of an advertisement, promotion, solicitation, proposal, or offer that is untrue, deceptive or misleading.

Sec. 4154.253. PROHIBITED ACTIONS AGAINST PHARMACY OR

PHARMACIST. Prohibits a pharmacy benefit manager from penalizing a pharmacy or terminating a contract with a pharmacy solely because of certain actions taken by the pharmacy or a pharmacist employed by the pharmacy.

Sec. 4154.254. PROHIBITED ACTIONS REGARDING BENEFITS. Sets forth prohibitions for a pharmacy benefit manager regarding benefits.

Sec. 4154.255. LICENSE TO PRACTICE PHARMACY REQUIRED. Prohibits a pharmacy benefit manager from taking certain actions unless the person also holds a license to practice pharmacy issued by the Texas Board of Pharmacy (board) under Chapter 558 (License to Practice Pharmacy), Occupations Code.

[Reserves Sections 4154.256-4154.300 for expansion.]

SUBCHAPTER G. ENFORCEMENT; SANCTIONS

Sec. 4154.301. COMPLAINTS; INVESTIGATION. (a) Requires the commissioner, by rule, to adopt procedures for investigation of complaints concerning the failure of a pharmacy benefit manager to comply with this chapter or Subchapter D, Chapter 4151.

(b) Requires the commissioner to refer a complaint received under this chapter to the board if the complaint involves certain issues.

Sec. 4154.302. DISCIPLINARY ACTIONS. Authorizes the commissioner to take certain actions if the commissioner has reason to believe that a violation of this chapter has occurred.

Sec. 4154.303. ADMINISTRATIVE PENALTY. Provides that a person that acts as a pharmacy benefit manager for a state-funded health care program without a certificate of authority issued under this chapter is subject to administrative penalties under Chapter 84 (Administrative Penalties). Prohibits a penalty imposed under this section from being less than \$5,000 or greater than \$10,000 for each violation.

Sec. 4154.304. CRIMINAL PENALTY. Provides that a pharmacy benefit manager commits a misdemeanor punishable by a fine of not less than \$500 or more than \$5,000 if the pharmacy benefit manager knowingly violates this chapter or a commissioner rule adopted under this chapter.

SECTION 2. Amends Section 4151.001(1), Insurance Code, to make a conforming change.

SECTION 3. (a) Provides that this section applies only to a person who:

(1) on the effective date of this Act, holds a certificate of authority issues under Chapter 4151, Insurance Code, as effective April 1, 2005; and

(2) immediately before the effective date of this Act is operating as a pharmacy benefit manager under that chapter.

(b) Provides that, notwithstanding any other provision of this Act, a person to whom this section applies is entitled to an initial certificate of authority under Chapter 4154, Insurance Code, as added by this Act, if the person applies to the commissioner of insurance in writing not later than March 1, 2006. Provides that the person does not have to comply with the application requirements adopted under Subchapter B, Chapter 4154, Insurance Code, as added by this Act, if the commissioner of insurance determines that the person is in compliance with the application and fidelity bond requirements imposed under Subchapter B (Certificate of Authority), Chapter 4151, Insurance Code, as effective April 1, 2005.

(c) Requires the commissioner of insurance to adopt rules as necessary to implement this section.

(d) Provides that this section expires July 1, 2006.

SECTION 4. Provides that a person is not required to hold a certificate of authority under Chapter 4154, Insurance Code, as added by this Act, to operate as a pharmacy benefit manager in this state for a state-funded health care program until January 1, 2006.

SECTION 5. Requires the commissioner of insurance to adopt rules as necessary to implement Chapter 4154, Insurance Code, as added by this Act, not later than December 31, 2005.

SECTION 6. (a) Effective date: September 1, 2005, except as provided by Subsection (b).

(b) Effective date: January 1, 2006, for Sections 4154.051, 4154.303, and 4154.304, Insurance Code.