

By: Isett

H.B. No. 1336

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of pharmacy benefit managers; providing administrative and criminal penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle D, Title 13, Insurance Code, is amended by adding Chapter 4154 to read as follows:

CHAPTER 4154. PHARMACY BENEFIT MANAGERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 4154.001. DEFINITIONS. In this chapter:

(1) "Board" means the Texas State Board of Pharmacy.

(2) "Claims processing service" means an administrative service performed in connection with the processing and adjudication of a claim relating to pharmaceutical services, including making payments to pharmacists and pharmacies.

(3) "Common controlling interest" means that a controlling interest in two persons is held by the same person.

(4) "Controlling interest" means that a person directly or indirectly owns, controls, holds with the power to vote, or holds proxies representing 50 percent or more of the voting interests of another person.

(5) "Labor union" has the meaning assigned by Section 101.051, Labor Code.

(6) "Maintenance drug" means a drug:

(A) prescribed by a health care practitioner who

1 is licensed to prescribe drugs; and

2 (B) used to treat a medical condition for a
3 period greater than 30 days.

4 (7) "Multi-source drug" means a drug that is stocked
5 and available from at least three suppliers.

6 (8) "Other prescription drug or device service" means
7 a service, other than a claims processing service, that is provided
8 directly or indirectly by a pharmacy benefit manager, whether in
9 connection with or separate from claims processing services,
10 including:

11 (A) negotiating a rebate, discount, other
12 financial incentive, or other arrangement with a drug company;

13 (B) disbursing or distributing a rebate;

14 (C) managing or participating in an incentive
15 program or arrangement for the services of a pharmacist;

16 (D) negotiating or entering into a contractual
17 arrangement with a pharmacist, a pharmacy, or both;

18 (E) developing drug formularies; and

19 (F) advertising or promoting claims processing
20 services or other prescription drug or device services.

21 (9) "Person" means an individual, corporation,
22 organization, trust, partnership, or other legal entity.

23 (10) "Pharmacist" has the meaning assigned by Section
24 551.003(28), Occupations Code.

25 (11) "Pharmacist's service" means a service that is
26 provided by a pharmacist, including drug therapy or another patient
27 care service, as defined by board rules, that is intended to achieve

1 outcomes related to:

2 (A) curing or preventing a disease;

3 (B) eliminating or reducing a patient's
4 symptoms; or

5 (C) arresting or slowing a disease process.

6 (12) "Pharmacy" has the meaning assigned by Section
7 551.003(31), Occupations Code.

8 (13) "Pharmacy benefit manager" means a person and any
9 wholly or partially owned or controlled subsidiary of the person,
10 that provides to third parties claims processing services, other
11 prescription drug or device services, or both services. The term
12 does not include:

13 (A) a health care facility licensed in this
14 state;

15 (B) a health care practitioner licensed in this
16 state;

17 (C) a pharmacy licensed in this state;

18 (D) an insurer authorized to engage in the
19 business of insurance in this state;

20 (E) a health maintenance organization that holds
21 a certificate of authority under Chapter 843;

22 (F) a labor union; or

23 (G) a consultant who only provides advice as to
24 the selection or performance of a pharmacy benefit manager.

25 (14) "Single source drug" means a drug other than a
26 multi-source drug.

27 (15) "Third party" means any person who is not a

1 pharmacy benefit manager. The term does not include:

2 (A) a person that holds a controlling interest in
3 a pharmacy benefit manager;

4 (B) a person that shares a common controlling
5 interest with a pharmacy benefit manager; or

6 (C) a policyholder, insured, member, or enrollee
7 of an insurer authorized to engage in the business of insurance in
8 this state or a health maintenance organization that holds a
9 certificate of authority under Chapter 843, to the extent that
10 claims processing services, other prescription drug or device
11 services, or both services, are provided to the policyholder,
12 insured, member, or enrollee by a person:

13 (i) in which the insurance company or
14 health maintenance organization holds a controlling interest; or

15 (ii) that shares common controlling
16 interest with the insurer or health maintenance organization.

17 (16) "Usual and customary price" means the price that
18 a pharmacist or pharmacy would charge a patient paying cash for the
19 same services provided on the same date to another patient, other
20 than a patient whose reimbursement rates are set by contract.

21 Sec. 4154.002. RULES. The commissioner shall adopt rules
22 and standards as necessary to implement this chapter.

23 Sec. 4154.003. APPLICABILITY OF OTHER PROVISIONS OF CODE.
24 A pharmacy benefit manager is subject to Section 823.457,
25 Subchapter H of Chapter 101, Chapter 541, Subchapter A of Chapter
26 542, and Chapter 804.

27 Sec. 4154.004. PHARMACY BENEFIT MANAGER NOT INSURANCE

1 AGENT. (a) A pharmacy benefit manager licensed in any state who
2 accepts an agent's commission for coverage for a risk located in
3 this state and disburses that commission to an agent in this state
4 is not considered an agent for purposes of this title.

5 (b) The exemption provided by this section does not
6 authorize a pharmacy benefit manager to perform any other act for
7 which a license as an agent is required by law.

8 [Sections 4154.005-4154.050 reserved for expansion]

9 SUBCHAPTER B. CERTIFICATE OF AUTHORITY; LICENSE

10 Sec. 4154.051. CERTIFICATE OF AUTHORITY REQUIRED; BOARD
11 LICENSE REQUIRED. (a) A person may not act as or represent that the
12 person is a pharmacy benefit manager in this state unless the person
13 is covered by and is engaging in business under a certificate of
14 authority issued by the commissioner under this chapter.

15 (b) In addition to the certificate of authority issued by
16 the commissioner, a person may not act as or represent that the
17 person is a pharmacy benefit manager in this state unless the person
18 holds a pharmacy benefit manager license issued by the board under
19 Chapter 570, Occupations Code.

20 (c) A person that holds a certificate of authority under
21 this chapter is not also required to hold a certificate of authority
22 as an administrator under Chapter 4151 to act as a pharmacy benefit
23 manager in this state.

24 Sec. 4154.052. APPLICATION REQUIREMENTS. (a) An applicant
25 for a certificate of authority under this chapter shall submit an
26 application to the department in the manner prescribed by the
27 commissioner.

1 (b) An application under this chapter must:

2 (1) include the information required in an application
3 made under Section 4151.052 and other information as required by
4 the commissioner; and

5 (2) be accompanied by a \$300 application fee.

6 Sec. 4154.053. FIDELITY BOND REQUIRED. (a) If the
7 commissioner approves an application under Section 4154.052 for a
8 certificate of authority, before the commissioner issues the
9 certificate of authority, the applicant must:

10 (1) obtain and maintain a fidelity bond that complies
11 with this section; and

12 (2) submit to the commissioner proof that the
13 applicant has obtained the fidelity bond.

14 (b) The fidelity bond must protect against an act of fraud
15 or dishonesty by the applicant in exercising the applicant's powers
16 and duties as a pharmacy benefit manager.

17 (c) The fidelity bond must be equal to at least 10 percent of
18 the amount of money handled by the pharmacy benefit manager during
19 the preceding year or, if no money was handled during the preceding
20 year, 10 percent of the amount of money reasonably estimated to be
21 handled by the pharmacy benefit manager during the calendar year in
22 which the license is issued.

23 (d) For purposes of this section, the amount of money
24 handled by a person in the person's capacity as pharmacy benefit
25 manager is the greater of the total amount of premiums and
26 contributions received by the pharmacy benefit manager or the total
27 amount of benefits paid by the pharmacy benefit manager in all

1 jurisdictions in which the person acts as a pharmacy benefit
2 manager.

3 (e) Unless the pharmacy benefit manager and an insurer,
4 health maintenance organization, or benefit plan sponsor agree
5 otherwise in writing, a pharmacy benefit manager is required to
6 obtain and maintain only one fidelity bond for all of the pharmacy
7 benefit manager's activities as a pharmacy benefit manager in this
8 state.

9 Sec. 4154.054. ISSUANCE OF CERTIFICATE; DURATION OF
10 CERTIFICATE; RENEWAL. (a) The commissioner shall issue a
11 certificate of authority to an applicant that complies with this
12 chapter.

13 (b) A pharmacy benefit manager is required to hold only one
14 certificate of authority issued under this chapter.

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

19 [Sections 4154.055-4154.100 reserved for expansion]

20 SUBCHAPTER C. DEPARTMENT REGULATION OF PHARMACY BENEFIT MANAGERS

21 Sec. 4154.101. EXAMINATION OF PHARMACY BENEFIT MANAGER.

22 (a) The commissioner may examine a pharmacy benefit manager with
23 regard to the manager's business in this state.

24 (b) An examination under this section must include a review
25 of:

26 (1) each existing written agreement between the
27 pharmacy benefit manager and an insurer, health maintenance

1 organization, or benefit plan sponsor; and

2 (2) the pharmacy benefit manager's financial
3 statements.

4 (c) The commissioner may also require an on-site evaluation
5 of the pharmacy benefit manager's personnel and facilities and any
6 books and records of the pharmacy benefit manager relating to the
7 transaction of business by and the financial condition of the
8 pharmacy benefit manager. Before an examiner enters the property
9 of the pharmacy benefit manager, the examiner must notify the
10 pharmacy benefit manager of the date and estimated time of the
11 examination in the manner prescribed by commissioner rule. The
12 examiner shall comply with any operational rules of the pharmacy
13 benefit manager while on the pharmacy benefit manager's property.

14 (d) The pharmacy benefit manager shall pay a fee to the
15 department not to exceed \$500 to cover the costs of an examination
16 under this section.

17 Sec. 4154.102. ANNUAL STATEMENT. (a) Not later than March
18 1 of each year, each pharmacy benefit manager shall file with the
19 department an annual statement for the preceding calendar year.

20 (b) The annual statement must be made on a form and in the
21 manner prescribed by the commissioner, accompanied by a \$1,000
22 filing fee, and must include the number and value of claims for
23 pharmacists' services that are processed by the pharmacy benefit
24 manager for the preceding calendar year for all patients who are
25 residents of this state.

26 Sec. 4154.103. EXTENSION OF FILING PERIOD. The
27 commissioner may extend, for a period not to exceed 60 days, the

1 time prescribed for the filing of an annual statement or other
2 report or exhibit by a pharmacy benefit manager for good cause.

3 Sec. 4154.104. ASSESSMENT. (a) In addition to the fees
4 required under this chapter, the commissioner shall annually assess
5 each pharmacy benefit manager holding a certificate of authority
6 under this chapter for the department's expenses in administering
7 this chapter.

8 (b) The commissioner shall proportionately assess each
9 pharmacy benefit manager under Subsection (a) for its share of the
10 total expenses incurred by the department in administering this
11 chapter in proportion to the business done by all pharmacy benefit
12 managers in this state, as determined by the commissioner by rule.

13 Sec. 4154.105. CHANGE IN OWNERSHIP. A pharmacy benefit
14 manager must notify the department in writing of any material
15 change in the ownership of the pharmacy benefit manager not later
16 than the fifth day after the effective date of the change of
17 ownership.

18 Sec. 4154.106. ARBITRATION. (a) The commissioner by rule
19 shall establish a procedure that uses arbitration for resolving
20 disputes arising under contracts entered into by pharmacy benefit
21 managers.

22 (b) The arbitration procedure adopted under Subsection (a)
23 must include participation by:

24 (1) pharmacy benefit managers or their
25 representatives;

26 (2) insurers, health maintenance organizations, or
27 benefit plan sponsors; and

1 (3) pharmacists.

2 [Sections 4154.107-4154.150 reserved for expansion]

3 SUBCHAPTER D. CONTRACT ISSUES

4 Sec. 4154.151. STANDARD CONTRACT FORMS REQUIRED. (a) The
5 commissioner, in consultation with the contract advisory panel
6 established under Section 4154.152, shall adopt rules that
7 establish standard contract forms for use by pharmacy benefit
8 managers in entering into contracts with pharmacies and pharmacists
9 and insurers, health maintenance organizations, and benefit plan
10 sponsors.

11 (b) Except as provided by Section 4154.153, a pharmacy
12 benefit manager that enters into a contract with a pharmacy or
13 pharmacist or insurer, health maintenance organization, or benefit
14 plan sponsor must use a contract form adopted by the commissioner
15 under this section.

16 (c) The terms of a contract form adopted under this section
17 and entered into by a pharmacy benefit manager and a pharmacy or
18 pharmacist or insurer, health maintenance organization, or benefit
19 plan sponsor may not be subsequently modified unless the
20 modification is agreed to by the pharmacy benefit manager and the
21 pharmacy or the pharmacist or the insurer, health maintenance
22 organization, or benefit plan sponsor.

23 Sec. 4154.152. PHARMACY BENEFIT MANAGER CONTRACT ADVISORY
24 PANEL. (a) The pharmacy benefit manager contract advisory panel is
25 established as an advisory body to the commissioner. The advisory
26 panel shall advise and make recommendations to the commissioner
27 regarding the adoption of standard contract forms under Section

1 4154.151.

2 (b) The advisory panel is composed of nine members appointed
3 jointly by the commissioner and the board as follows:

4 (1) two members must be attorneys who primarily
5 represent insurers, health maintenance organizations, or benefit
6 plan sponsors;

7 (2) two members must be pharmacists;

8 (3) two members must be pharmacy benefit managers who
9 hold certificates of authority under this chapter; and

10 (4) three members must be public members.

11 (c) A public member of the advisory panel may not:

12 (1) receive any compensation from, or be employed
13 directly or indirectly by, a pharmacist, pharmacy benefit manager,
14 health care provider, insurer, health maintenance organization, or
15 benefit plan sponsor;

16 (2) be a pharmacist or pharmacy benefit manager; or

17 (3) be a person required to register as a lobbyist
18 under Chapter 305, Government Code, because of the person's
19 activities for compensation on behalf of a profession related to
20 the operation of the advisory panel.

21 (d) Members of the advisory panel serve without
22 compensation and at the will of the commissioner.

23 (e) Section 2110.008, Government Code, does not apply to the
24 advisory panel.

25 Sec. 4154.153. COMMISSIONER APPROVAL OF CONTRACT FORMS.

26 (a) Not later than the 30th day before the date on which a pharmacy
27 benefit manager proposes to use a form in this state, other than a

1 form adopted under Section 4154.151, for a contract entered into
2 with a pharmacy or pharmacist to provide services in this state, the
3 pharmacy benefit manager must file the form with the department.

4 (b) Each contract form is subject to approval by the
5 commissioner. If the commissioner fails to approve a form before
6 the 31st day after the date on which the form is received by the
7 department, the form is deemed disapproved.

8 (c) The commissioner by rule shall develop formal criteria
9 for the approval and disapproval of pharmacy benefit manager
10 contract forms under this section.

11 Sec. 4154.154. CONTRACT TERMS. (a) Each contract entered
12 into by a pharmacy benefit manager under this chapter must:

13 (1) establish specific times within which the pharmacy
14 benefit manager is required to pay a pharmacy, a pharmacist, or both
15 for services rendered;

16 (2) include a provision stating that a pharmacy is not
17 liable for the acts or omissions of the pharmacy benefit manager;
18 and

19 (3) establish the average wholesale price of a
20 prescription drug or device that is used as an index for claim
21 payments.

22 (b) A pharmacy benefit manager contract may not:

23 (1) establish basic recordkeeping requirements for a
24 pharmacy or pharmacist that are more stringent than the
25 recordkeeping requirements required by state or federal laws or
26 rules;

27 (2) require a pharmacy or pharmacist to change a

1 maintenance drug prescribed for a patient unless the prescribing
2 physician orders the change; or

3 (3) limit the services a pharmacist may provide to a
4 range narrower than the scope of the pharmacist's license to
5 practice pharmacy.

6 [Sections 4154.155-4154.200 reserved for expansion]

7 SUBCHAPTER E. POWERS AND DUTIES OF PHARMACY BENEFIT MANAGERS

8 Sec. 4154.201. IDENTIFICATION CARDS. (a) Except as
9 provided by commissioner rules, a pharmacy benefit manager shall
10 issue an identification card to each individual covered by a plan
11 that provides pharmacy benefits. The pharmacy benefit manager
12 shall issue the identification card not later than the 30th day
13 after the date the pharmacy benefit manager receives notice that
14 the individual is eligible for the benefits.

15 (b) The commissioner by rule shall adopt standard
16 information to be included on the identification card. The
17 standard form identification card must include:

18 (1) the name or logo of the entity administering the
19 pharmacy benefits;

20 (2) the international identification number assigned
21 by the American National Standards Institute for the entity
22 administering the pharmacy benefits;

23 (3) the group number applicable to the covered
24 individual;

25 (4) the effective date of the coverage evidenced by
26 the card;

27 (5) a telephone number to be used to contact an

1 appropriate person to obtain information relating to the pharmacy
2 benefits provided under the coverage; and

3 (6) copayment information for generic and brand-name
4 prescription drugs covered by the plan.

5 Sec. 4154.202. DISCLOSURE OF CERTAIN PATIENT INFORMATION
6 PROHIBITED. (a) A pharmacy benefit manager may not sell a list of
7 patients that contains information through which the identity of an
8 individual patient is disclosed.

9 (b) A pharmacy benefit manager shall maintain all data that
10 identifies a patient in a confidential manner that prevents
11 disclosure to a third party unless the disclosure is otherwise
12 authorized by law or by the patient.

13 (c) This section does not prohibit:

14 (1) general advertising about a specific
15 pharmaceutical product or service; or

16 (2) the request and receipt by a person of information
17 regarding:

18 (A) a specific pharmaceutical product or
19 service;

20 (B) the person's own records or claims; or

21 (C) the person's dependent's records or claims.

22 Sec. 4154.203. MEDICATION REIMBURSEMENT COSTS; INDEX. (a)
23 Each pharmacy benefit manager shall use a current nationally
24 recognized benchmark as the basis for reimbursements for
25 medications and products dispensed by pharmacies and pharmacists
26 with whom the pharmacy benefit manager contracts.

27 (b) For brand-name single source drugs and brand-name

1 multi-source drugs, the pharmacy benefit manager shall use as an
2 index the average wholesale price, as listed in:

- 3 (1) First DataBank;
4 (2) Facts & Comparisons; or
5 (3) a comparable source recognized by the
6 commissioner, as provided by Subsection (d).

7 (c) For generic multi-source drugs, maximum allowable costs
8 shall be established by referencing the baseline price, as listed
9 in:

- 10 (1) First DataBank;
11 (2) Facts & Comparisons; or
12 (3) a comparable source recognized by the
13 commissioner, as provided by Subsection (d).

14 (d) If a publication specified in Subsection (b) or (c)
15 ceases to be a nationally recognized benchmark for reimbursement
16 for medication and products dispensed by pharmacies and
17 pharmacists, the commissioner may adopt any other current
18 nationally recognized benchmark that is established and published
19 by a person with whom pharmacy benefit managers do not have a
20 financial or business interest or connection.

21 (e) To be eligible to be reimbursed through a maximum
22 allowable cost price methodology, a product must:

- 23 (1) be equivalent and generically interchangeable as
24 provided by state laws related to pharmaceutical products; and
25 (2) have a United States Food and Drug Administration
26 Orange Book rating of "A" through "B".

27 (f) If a generic multi-source drug product does not have a

1 baseline price, the drug shall be treated as a brand-name single
2 source drug for the purpose of valuing reimbursement.

3 [Sections 4154.204-4154.250 reserved for expansion]

4 SUBCHAPTER F. PROHIBITED ACTIONS BY PHARMACY BENEFIT MANAGERS

5 Sec. 4154.251. CERTAIN RETROACTIVE CLAIM ADJUSTMENTS
6 PROHIBITED. (a) A pharmacy benefit manager may not retroactively
7 deny a claim paid by the pharmacy benefits manager for a
8 pharmacist's services or adjust the claim after adjudication of the
9 claim unless:

- 10 (1) the original claim was submitted fraudulently;
11 (2) the payment of the original claim was in error
12 because the pharmacy or pharmacist had already been paid for the
13 pharmacist's services; or
14 (3) the services in question were not rendered by the
15 pharmacy or pharmacist.

16 (b) A pharmacy benefit manager may not retroactively
17 reverse an acknowledgment of eligibility.

18 Sec. 4154.252. DECEPTIVE ADVERTISEMENTS OR OFFERS
19 PROHIBITED. A pharmacy benefit manager, or a representative of a
20 pharmacy benefit manager, may not cause or knowingly permit the use
21 of an advertisement, promotion, solicitation, proposal, or offer
22 that is untrue, deceptive, or misleading.

23 Sec. 4154.253. PROHIBITED ACTIONS AGAINST PHARMACY OR
24 PHARMACIST. A pharmacy benefit manager may not penalize a pharmacy
25 or terminate a contract with a pharmacy solely because the pharmacy
26 or a pharmacist employed by the pharmacy:

- 27 (1) files a complaint with the department against the

1 pharmacy benefit manager;

2 (2) disagrees with the pharmacy benefit manager's
3 decision to deny or limit benefits to an insured, member, or
4 enrollee;

5 (3) assists an insured, member, or enrollee in seeking
6 reconsideration of the pharmacy benefit manager's decision to deny
7 or limit benefits to the insured, member, or enrollee; or

8 (4) discusses alternative prescription drugs or
9 devices with an insured, member, or enrollee.

10 [Sections 4154.254-4154.300 reserved for expansion]

11 SUBCHAPTER G. ENFORCEMENT; SANCTIONS

12 Sec. 4154.301. ENFORCEMENT; RULES. The commissioner shall
13 adopt rules as necessary to enforce this chapter. In adopting rules
14 under this section, the commissioner shall consult and cooperate
15 with the board as necessary to coordinate enforcement of the
16 certificate of authority requirements adopted under this chapter
17 with the license requirements adopted under Chapter 570,
18 Occupations Code.

19 Sec. 4154.302. COMPLAINTS; INVESTIGATION. (a) The
20 commissioner by rule shall adopt procedures for investigation of
21 complaints concerning the failure of a pharmacy benefit manager to
22 comply with this chapter.

23 (b) The commissioner shall refer a complaint received under
24 this chapter to the board if the complaint involves:

25 (1) a pharmacy or a pharmacist or other health care
26 practitioner regulated under Subtitle J, Title 3, Occupations Code;
27 or

1 (2) an issue regarding patient health or safety.

2 Sec. 4154.303. DISCIPLINARY ACTIONS. If the commissioner
3 has reason to believe that a violation of this chapter has occurred,
4 the commissioner may:

5 (1) issue an emergency cease and desist order under
6 Chapter 83 against the pharmacy benefit manager; or

7 (2) impose any other necessary or appropriate sanction
8 under Chapter 82, including suspension or revocation of the
9 pharmacy benefit manager's certificate of authority.

10 Sec. 4154.304. ADMINISTRATIVE PENALTY. A person that acts
11 as a pharmacy benefit manager without a certificate of authority
12 issued under this chapter is subject to administrative penalties
13 under Chapter 84. An administrative penalty imposed under this
14 section may not be less than \$5,000 or greater than \$10,000 for each
15 violation.

16 Sec. 4154.305. CRIMINAL PENALTY. (a) A pharmacy benefit
17 manager commits an offense if the pharmacy benefit manager
18 knowingly violates this chapter or a commissioner rule adopted
19 under this chapter.

20 (b) An offense under this section is a misdemeanor
21 punishable by a fine of not less than \$500 or more than \$5,000.

22 SECTION 2. Subtitle J, Title 3, Occupations Code, is
23 amended by adding Chapter 570 to read as follows:

24 CHAPTER 570. REGULATION OF PHARMACY BENEFIT MANAGERS

25 SUBCHAPTER A. GENERAL PROVISIONS

26 Sec. 570.001. DEFINITIONS. In this chapter:

27 (1) "Commissioner" means the commissioner of

1 insurance.

2 (2) "Department" means the Texas Department of
3 Insurance.

4 (3) "Pharmacy benefit manager" has the meaning
5 assigned by Section 4154.001, Insurance Code.

6 [Sections 570.002-570.050 reserved for expansion]

7 SUBCHAPTER B. LICENSE REQUIREMENTS

8 Sec. 570.051. LICENSE REQUIRED; DEPARTMENT CERTIFICATE OF
9 AUTHORITY REQUIRED. (a) A person may not act as or represent that
10 the person is a pharmacy benefit manager in this state unless the
11 person holds a pharmacy benefit manager license issued by the board
12 under this chapter.

13 (b) In addition to the license issued by the board under
14 this chapter, a person may not act as or represent that the person
15 is a pharmacy benefit manager in this state unless the person is
16 covered by and is engaging in business under a certificate of
17 authority issued by the commissioner under Chapter 4154, Insurance
18 Code.

19 Sec. 570.052. LICENSE REQUIREMENTS. (a) The board by rule
20 shall adopt the requirements for an original or renewal license
21 issued under this chapter.

22 (b) In adopting rules under this section, the board shall
23 consider the requirements adopted by the commissioner under Chapter
24 4154, Insurance Code.

25 Sec. 570.053. LICENSE APPLICATION. Each applicant for a
26 license under this chapter shall submit a license application in
27 the manner prescribed by the board, accompanied by a nonrefundable

1 \$500 application fee.

2 Sec. 570.054. INVESTIGATIONS. As the board considers
3 necessary for the protection of the residents of this state, the
4 board may conduct investigations regarding the quality of the
5 services provided by:

6 (1) a pharmacy benefit manager; or

7 (2) a pharmacy or pharmacist with whom the pharmacy
8 benefit manager contracts.

9 [Sections 570.055-570.100 reserved for expansion]

10 SUBCHAPTER C. PROHIBITED ACTS

11 Sec. 570.101. GENERAL PROHIBITED ACTS. A person licensed
12 under this chapter and doing business as a pharmacy benefit manager
13 may not:

14 (1) intervene in the delivery or transmission of
15 prescriptions from a prescribing health care practitioner to a
16 pharmacy or pharmacist for purposes of influencing the prescribing
17 health care practitioner's choice of therapy;

18 (2) attempt to influence an insured's, member's, or
19 enrollee's choice of pharmacy or pharmacist; or

20 (3) change a drug or device prescribed by a health care
21 practitioner without the written consent of the prescribing health
22 care practitioner.

23 Sec. 570.102. LICENSE TO PRACTICE PHARMACY REQUIRED.

24 Unless a person licensed under this chapter and doing business as a
25 pharmacy benefit manager also holds a license to practice pharmacy
26 issued by the board under Chapter 558, the person may not:

27 (1) provide pharmaceutical care or patient

1 counseling;

2 (2) interpret or evaluate a prescription drug order;

3 (3) participate in prescription drug or device
4 selection, administration, or regimen review;

5 (4) dispense or distribute drug orders or products; or

6 (5) perform a specific act of drug therapy for an
7 insured, member, or enrollee.

8 [Sections 570.103-570.150 reserved for expansion]

9 SUBCHAPTER D. ENFORCEMENT

10 Sec. 570.151. ENFORCEMENT; RULES. The board shall adopt
11 rules as necessary to enforce this chapter. In adopting rules under
12 this section, the board shall consult and cooperate with the
13 commissioner as necessary to coordinate enforcement of the license
14 requirements adopted under this chapter with the certificate of
15 authority requirements adopted under Chapter 4154, Insurance Code.

16 Sec. 570.152. COMPLAINTS; INVESTIGATION. (a) The board by
17 rule shall adopt procedures under Chapter 555 for investigation of
18 complaints concerning the failure of a pharmacy benefit manager to
19 comply with this chapter.

20 (b) The board shall refer a complaint received under this
21 chapter to the commissioner if the complaint involves an issue
22 regarding the business operations or finances of the pharmacy
23 benefit manager.

24 Sec. 570.153. DISCIPLINARY ACTIONS. If the board has
25 reason to believe that a violation of this chapter has occurred, the
26 board may, after notice and hearing:

27 (1) issue a cease and desist order against the

1 pharmacy benefit manager; or

2 (2) take any other necessary or appropriate action
3 under this subtitle, including suspension or revocation of the
4 pharmacy benefit manager's license.

5 SECTION 3. Section 4151.001(1), Insurance Code, as
6 effective April 1, 2005, is amended to read as follows:

7 (1) "Administrator" means a person who, in connection
8 with annuities or life, health, and accident benefits, other than
9 ~~[including]~~ pharmacy benefits, collects premiums or contributions
10 from or adjusts or settles claims for residents of this state. The
11 term does not include:

12 (A) a person described by Section 4151.002; or

13 (B) a pharmacy benefit manager regulated under
14 Chapter 4154.

15 SECTION 4. Subchapter D, Chapter 4151, Insurance Code, as
16 effective April 1, 2005, is repealed.

17 SECTION 5. (a) This section applies only to a person who:

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

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

23 (b) Notwithstanding any other provision of this Act, a
24 person to whom this section applies is entitled to an initial
25 certificate of authority under Chapter 4154, Insurance Code, as
26 added by this Act, if the person applies to the commissioner of
27 insurance in writing not later than March 1, 2006. The person is

1 not required to comply with the application requirements adopted
2 under Subchapter B, Chapter 4154, Insurance Code, as added by this
3 Act, if the commissioner of insurance determines that the person is
4 in compliance with the application and fidelity bond requirements
5 imposed under Subchapter B, Chapter 4151, Insurance Code, as
6 effective April 1, 2005.

7 (c) The commissioner of insurance shall adopt rules as
8 necessary to implement this section.

9 (d) This section expires July 1, 2006.

10 SECTION 6. A person is not required to hold a certificate of
11 authority under Chapter 4154, Insurance Code, as added by this Act,
12 or a license under Chapter 570, Occupations Code, as added by this
13 Act, to operate as a pharmacy benefit manager in this state until
14 January 1, 2006.

15 SECTION 7. (a) The commissioner of insurance shall adopt
16 rules as necessary to implement Chapter 4154, Insurance Code, as
17 added by this Act, not later than December 31, 2005.

18 (b) The Texas State Board of Pharmacy shall adopt rules as
19 necessary to implement Chapter 570, Occupations Code, as added by
20 this Act, not later than December 31, 2005.

21 SECTION 8. (a) Except as provided by Subsection (b) of this
22 section, this Act takes effect September 1, 2005.

23 (b) Sections 4154.051, 4154.304, and 4154.305, Insurance
24 Code, and Section 570.051, Occupations Code, take effect January 1,
25 2006.