

By: Armbrister

S.B. No. 1324

A BILL TO BE ENTITLED

AN ACT

relating to the delivery of prescription drugs by mail order.

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

SECTION 1. Chapter 1369, Insurance Code, as effective April 1, 2005, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. DELIVERY OF PRESCRIPTION DRUGS BY MAIL

Sec. 1369.201. DEFINITIONS. In this subchapter, "mail order pharmacy" means a pharmacy that:

(1) does not have a retail facility in the community in which an enrollee lives; and

(2) exclusively delivers prescription drugs to an enrollee through the United States Postal Service or a commercial delivery service.

Sec. 1369.202. APPLICABILITY OF SUBCHAPTER. (a) This subchapter applies only to a health benefit plan that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage or similar coverage document that is offered or administered by:

(1) an insurance company;

(2) a group hospital service corporation operating under Chapter 842;

1 (3) a fraternal benefit society operating under
2 Chapter 885;

3 (4) a stipulated premium company operating under
4 Chapter 884;

5 (5) a reciprocal or interinsurance exchange operating
6 under Chapter 942;

7 (6) a health maintenance organization operating under
8 Chapter 843;

9 (7) a multiple employer welfare arrangement that holds
10 a certificate of authority under Chapter 846;

11 (8) an approved nonprofit health corporation that
12 holds a certificate of authority under Chapter 844;

13 (9) a third-party administrator, including a pharmacy
14 benefit manager, that holds a certificate of authority under
15 Chapter 4151;

16 (10) the Teacher Retirement System of Texas under
17 Chapter 1575 or 1579; or

18 (11) the Employees Retirement System of Texas under
19 Chapter 1551.

20 (b) Notwithstanding any other law, this subchapter applies
21 to a standard health benefit plan issued under Chapter 1507 or
22 Article 3.80 or 20A.09N offered or administered by an entity
23 described by Subsection (a).

24 Sec. 1369.203. EXCEPTION. This subchapter does not apply
25 to:

26 (1) a health benefit plan that provides coverage:

27 (A) only for a specified disease or for another

1 limited benefit other than cancer;

2 (B) only for accidental death or dismemberment;

3 (C) for wages or payments in lieu of wages for a
4 period during which an employee is absent from work because of
5 sickness or injury;

6 (D) as a supplement to a liability insurance
7 policy;

8 (E) for credit insurance;

9 (F) only for dental or vision care; or

10 (G) only for indemnity for hospital confinement;

11 (2) a small employer health benefit plan written under
12 Chapter 1501;

13 (3) a Medicare supplemental policy as defined by
14 Section 1882(g)(1), Social Security Act (42 U.S.C. Section 1395ss);

15 (4) a workers' compensation insurance policy;

16 (5) medical payment insurance coverage provided under
17 an automobile insurance policy; or

18 (6) a long-term care insurance policy, including a
19 nursing home fixed indemnity policy, unless the commissioner
20 determines that the policy provides benefit coverage so
21 comprehensive that the policy is a health benefit plan as described
22 by Section 1369.151.

23 Sec. 1369.204. ACCESS TO PHARMACIES. (a) Notwithstanding
24 any other law, an issuer of a health benefit plan that provides
25 pharmacy benefits to enrollees may not:

26 (1) require an enrollee, as a condition of obtaining
27 benefits or reimbursement for prescription drugs or pharmacy

1 services, to obtain the drugs or services exclusively from a mail
2 order pharmacy;

3 (2) discriminate between different pharmacies based
4 on whether the pharmacy is a mail order pharmacy or a pharmacy
5 located in the community in which an enrollee lives by:

6 (A) limiting the quantity of a prescription drug
7 an enrollee may obtain from the pharmacy; or

8 (B) requiring an enrollee to pay a different
9 copayment, coinsurance, or deductible amount;

10 (3) provide a monetary incentive or impose a monetary
11 penalty on an enrollee that could reasonably be expected to affect
12 the enrollee's choice among pharmacies that have agreed to
13 participate in the health benefit plan; or

14 (4) prohibit a qualified pharmacy from participating
15 under the health benefit plan if the pharmacy meets all of the
16 conditions of and agrees to all of the terms of participation in the
17 health benefit plan.

18 (b) An issuer of a health benefit plan that provides
19 pharmacy benefits to enrollees shall offer all pharmacies the same
20 conditions and terms of participation in the health benefit plan,
21 regardless of whether a pharmacy is a mail order pharmacy or a
22 pharmacy located in the community in which an enrollee lives.

23 Sec. 1369.205. INJUNCTIVE RELIEF. An enrollee, pharmacy,
24 or pharmacist aggrieved by a violation or threatened violation of
25 this subchapter may file a civil cause of action requesting
26 injunctive relief to restrain an issuer of a health benefit plan
27 from committing a violation or threatened violation of this

1 subchapter.

2 SECTION 2. Section 1551.219, Insurance Code, as added by
3 Chapter 213, Acts of the 78th Legislature, Regular Session, 2003,
4 is amended to read as follows:

5 Sec. 1551.219. MAIL ORDER REQUIREMENT FOR PRESCRIPTION DRUG
6 COVERAGE PROHIBITED. The board of trustees or a health benefit plan
7 under this chapter that provides benefits for prescription drugs
8 may not require a participant in the group benefits program to
9 purchase a prescription drug through a mail order program. The
10 board or health benefit plan may not [~~shall~~] require that a
11 participant who chooses to obtain a prescription drug through a
12 retail pharmacy or other method other than by mail order pay a
13 deductible, copayment, coinsurance, or other cost-sharing
14 obligation to cover the additional cost of obtaining a prescription
15 drug through that method rather than by mail order.

16 SECTION 3. The change in law made this Act applies only to a
17 health benefit plan that is delivered, issued for delivery, or
18 renewed on or after January 1, 2006. A health benefit plan that is
19 delivered, issued for delivery, or renewed before January 1, 2006,
20 is covered by the law in effect at the time the policy was
21 delivered, issued for delivery, or renewed, and that law is
22 continued in effect for that purpose.

23 SECTION 4. This Act takes effect September 1, 2005.