

By: Gattis

H.B. No. 1613

A BILL TO BE ENTITLED

AN ACT

relating to the delivery of prescription drugs for certain state health plans by mail order; providing an administrative penalty.

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

SECTION 1. Subtitle H, Title 8, Insurance Code, is amended by adding Chapter 1560 to read as follows:

CHAPTER 1560. DELIVERY OF PRESCRIPTION DRUGS BY MAIL

Sec. 1560.001. DEFINITIONS. In this chapter:

(1) "Community retail pharmacy" means a pharmacy that is licensed as a Class A pharmacy under Chapter 560, Occupations Code.

(2) "Mail order pharmacy" means a pharmacy that is licensed as a Class E pharmacy under Chapter 560, Occupations Code, and that primarily delivers prescription drugs to an enrollee through the United States Postal Service or a commercial delivery service.

(3) "Prescription drug formulary" means a list of prescription drugs preferred for use and eligible for coverage under a health benefit plan.

Sec. 1560.002. APPLICABILITY OF CHAPTER. This chapter 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

1 group hospital service contract, or an individual or group evidence
2 of coverage or similar coverage document that is offered or
3 administered by:

4 (1) the Teacher Retirement System of Texas under
5 Chapter 1575 or 1579; or

6 (2) the Employees Retirement System of Texas under
7 Chapter 1551.

8 Sec. 1560.003. ACCESS TO PHARMACIES. (a) Notwithstanding
9 any other law, an issuer of a health benefit plan that provides
10 pharmacy benefits to enrollees may not:

11 (1) require an enrollee, as a condition of obtaining
12 benefits or reimbursement for prescription drugs or pharmacy
13 services, to obtain the drugs or services exclusively from a mail
14 order pharmacy;

15 (2) discriminate between different pharmacies based
16 on whether the pharmacy is a mail order pharmacy or a community
17 retail pharmacy by:

18 (A) limiting the quantity of a prescription drug
19 an enrollee may obtain from the pharmacy, including limiting the
20 number of days of supply or number of units of a prescription drug
21 or the number of prescriptions or refills of a prescription drug the
22 enrollee may obtain;

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

25 (C) using different prescription drug
26 formularies for mail order pharmacies and community retail
27 pharmacies;

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

5 (4) prohibit a pharmacy licensed under Chapter 560,
6 Occupations Code, from participating under the health benefit plan
7 if the pharmacy meets all of the conditions of and agrees to all of
8 the terms of participation in the health benefit plan.

9 (b) An issuer of a health benefit plan that provides
10 pharmacy benefits to enrollees shall offer all pharmacies the same
11 conditions and terms of participation in the health benefit plan,
12 including prescription drug reimbursement rates, regardless of
13 whether a pharmacy is a mail order pharmacy or a community retail
14 pharmacy.

15 Sec. 1560.004. PRESCRIPTION DRUG REIMBURSEMENT RATES. (a)
16 An issuer of a health benefit plan that provides pharmacy benefits
17 to enrollees shall reimburse pharmacies participating in the health
18 plan using prescription drug reimbursement rates that are based on
19 a current and nationally recognized benchmark index for both brand
20 name and generic prescription drugs.

21 (b) An issuer of a health benefit plan shall use the same
22 benchmark index, including the same national prescription drug
23 codes, to reimburse all pharmacies participating in the health
24 benefit plan, regardless of whether the pharmacy is a mail order
25 pharmacy or a community retail pharmacy.

26 Sec. 1560.005. COMPLAINT AND ENFORCEMENT; ADMINISTRATIVE
27 PENALTIES. (a) The department shall investigate any complaint that

1 the department receives concerning conduct regulated by this
2 chapter.

3 (b) Following an investigation under Subsection (a), the
4 commissioner shall issue a written determination of the outcome of
5 the investigation, including whether the department has taken or
6 intends to take any action under Chapters 81-86.

7 (c) If, as a result of a complaint investigated under
8 Subsection (a), the commissioner determines that an issuer of a
9 health benefit plan has violated this chapter, the commissioner
10 shall impose an administrative penalty against the issuer of the
11 health benefit plan in accordance with Chapter 84. The amount of an
12 administrative penalty imposed under this subsection may not exceed
13 \$1,000 per prescription that was filled or that was not filled in
14 violation of this chapter. The limitation on the amount of an
15 administrative penalty under Section 84.022 does not apply to an
16 administrative penalty imposed under this subsection.

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

20 Sec. 1551.219. MAIL ORDER REQUIREMENT FOR PRESCRIPTION DRUG
21 COVERAGE PROHIBITED. The board of trustees or a health benefit plan
22 under this chapter that provides benefits for prescription drugs
23 may not require a participant in the group benefits program to
24 purchase a prescription drug through a mail order program. The
25 board or health benefit plan may not [~~shall~~] require that a
26 participant who chooses to obtain a prescription drug through a
27 retail pharmacy or other method other than by mail order pay a

1 deductible, copayment, coinsurance, or other cost-sharing
2 obligation to cover the additional cost of obtaining a prescription
3 drug through that method rather than by mail order.

4 SECTION 3. The change in law made this Act applies only to a
5 health benefit plan that is delivered, issued for delivery, or
6 renewed on or after January 1, 2008. A health benefit plan that is
7 delivered, issued for delivery, or renewed before January 1, 2008,
8 is covered by the law in effect at the time the policy was
9 delivered, issued for delivery, or renewed, and that law is
10 continued in effect for that purpose.

11 SECTION 4. This Act takes effect September 1, 2007.