

A BILL TO BE ENTITLED

AN ACT

relating to treatment of pharmaceutical services provided through specialty and mail order pharmacy services operated under contracts between governmental entities and pharmacy benefit managers.

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

SECTION 1. Subchapter B, Chapter 531, Government Code, is amended by adding Sections 531.0746, 531.0747, 531.0748, and 531.0749 to read as follows:

Sec. 531.0746. SPECIALTY PHARMACY SERVICES. (a) In this section:

(1) "Pharmacy benefit manager" means a person, other than a pharmacy or pharmacist, who acts as an administrator in connection with pharmacy benefits.

(2) "Specialty pharmacy service" means a service offered by a pharmacy benefit manager in relation to benefits that involve chronic conditions, unusually high treatment costs, or management of complex care issues. The term specifically includes the provision of pharmaceutical benefits involving:

(A) injectable and infusion therapies;

(B) therapies with annual costs to the patient of \$5,000 or more; and

(C) therapies requiring complex care.

(b) A contract with a pharmacy benefit manager entered into with respect to any program under the jurisdiction of the

1 commission that includes specialty pharmacy services must provide
2 that the pharmacy benefit manager shall:

3 (1) pass through to the commission for deposit in the
4 general revenue fund 100 percent of any revenue associated with
5 distribution of a specialty pharmacy product paid by a
6 pharmaceutical manufacturer or labeler to the pharmacy benefit
7 manager;

8 (2) agree to charge the commission on an acquisition
9 cost basis, which may include a dispensing fee, for all specialty
10 pharmacy prescriptions, based on actual inventory costs or
11 wholesale acquisition cost; and

12 (3) provide case management for critical disease
13 conditions, as specified by the contract, and agree not to
14 incorporate the costs of the case management into the costs
15 assessed for drug ingredients for the specialty pharmacy product.

16 Sec. 531.0747. MAIL ORDER PHARMACY SERVICES. (a) In this
17 section:

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

23 (2) "Pharmacy benefit manager" means a person, other
24 than a pharmacy or pharmacist, who acts as an administrator in
25 connection with pharmacy benefits.

26 (b) A contract with a pharmacy benefit manager entered into
27 with respect to any program under the jurisdiction of the

1 commission that includes pharmacy services must provide that the
2 pharmacy benefit manager shall agree to charge the commission on an
3 acquisition cost basis, which may include a dispensing fee, for all
4 prescriptions filled by a mail order pharmacy, based on actual
5 inventory costs or wholesale acquisition cost.

6 Sec. 531.0748. PHARMACY BENEFIT MANAGERS: DESIGNATION OF
7 CONFIDENTIAL INFORMATION. (a) A pharmacy benefit manager may
8 designate as confidential any information the pharmacy benefit
9 manager is required to disclose to comply with Section 531.0746 or
10 531.0747.

11 (b) Information designated as confidential under this
12 section may not be disclosed by the commission to any person without
13 the consent of the pharmacy benefit manager unless the disclosure
14 is:

15 (1) ordered by a court for good cause shown;

16 (2) made under seal in a court filing; or

17 (3) made to the commissioner of insurance or the
18 attorney general in connection with an investigation authorized by
19 this code, the Insurance Code, or any other law.

20 Sec. 531.0749. AUDIT OF PHARMACY BENEFIT MANAGERS. (a) In
21 this section, "pharmacy benefit manager" means a person, other than
22 a pharmacy or pharmacist, who acts as an administrator in
23 connection with pharmacy benefits.

24 (b) A contract with a pharmacy benefit manager entered into
25 with respect to any mail order or specialty pharmacy services
26 program under the jurisdiction of the commission must provide that
27 the commission, using an auditor selected by the commission, may

1 audit:

2 (1) the program's pharmacy benefit claims;

3 (2) the pharmacy benefit manager's contracts with
4 pharmaceutical manufacturers and labelers;

5 (3) the pharmacy benefit manager's utilization
6 management clinical criteria; and

7 (4) mail service purchasing invoices related to
8 benefits provided under the program.

9 (c) This section does not affect the state auditor's
10 authority to access information or conduct an audit.

11 SECTION 2. Subchapter D, Chapter 1001, Health and Safety
12 Code, is amended by adding Sections 1001.081, 1001.082, 1001.083,
13 and 1001.084 to read as follows:

14 Sec. 1001.081. SPECIALTY PHARMACY SERVICES. (a) In this
15 section:

16 (1) "Pharmacy benefit manager" means a person, other
17 than a pharmacy or pharmacist, who acts as an administrator in
18 connection with pharmacy benefits.

19 (2) "Specialty pharmacy service" means a service
20 offered by a pharmacy benefit manager in relation to benefits that
21 involve chronic conditions, unusually high treatment costs, or
22 management of complex care issues. The term specifically includes
23 the provision of pharmaceutical benefits involving:

24 (A) injectable and infusion therapies;

25 (B) therapies with annual costs to the patient of
26 \$5,000 or more; and

27 (C) therapies requiring complex care.

1 (b) A contract with a pharmacy benefit manager entered into
2 with respect to any program under the jurisdiction of the
3 department that includes specialty pharmacy services must provide
4 that the pharmacy benefit manager shall:

5 (1) pass through to the department for deposit in the
6 general revenue fund 100 percent of any of the revenue associated
7 with distribution of a specialty pharmacy product paid by a
8 pharmaceutical manufacturer or labeler to the pharmacy benefit
9 manager;

10 (2) agree to charge the department on an acquisition
11 cost basis, which may include a dispensing fee, for all specialty
12 pharmacy prescriptions, based on actual inventory costs or
13 wholesale acquisition cost; and

14 (3) provide case management for critical disease
15 conditions, as specified by the contract, and agree not to
16 incorporate the costs of the case management into the costs
17 assessed for drug ingredients for the specialty pharmacy product.

18 Sec. 1001.082. MAIL ORDER PHARMACY SERVICES. (a) In this
19 section:

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

25 (2) "Pharmacy benefit manager" means a person, other
26 than a pharmacy or pharmacist, who acts as an administrator in
27 connection with pharmacy benefits.

1 (b) A contract with a pharmacy benefit manager entered into
2 with respect to any program under the jurisdiction of the
3 department that includes pharmacy services must provide that the
4 pharmacy benefit manager shall agree to charge the department on an
5 acquisition cost basis, which may include a dispensing fee, for all
6 prescriptions filled by a mail order pharmacy, based on actual
7 inventory costs or wholesale acquisition cost.

8 Sec. 1001.083. PHARMACY BENEFIT MANAGERS: DESIGNATION OF
9 CONFIDENTIAL INFORMATION. (a) A pharmacy benefit manager may
10 designate as confidential any information the pharmacy benefit
11 manager is required to disclose to comply with Section 1001.081 or
12 1001.082.

13 (b) Information designated as confidential under this
14 section may not be disclosed by the department to any person without
15 the consent of the pharmacy benefit manager unless the disclosure
16 is:

- 17 (1) ordered by a court for good cause shown;
18 (2) made under seal in a court filing; or
19 (3) made to the commissioner of insurance or the
20 attorney general in connection with an investigation authorized by
21 this code, the Insurance Code, or any other law.

22 Sec. 1001.084. AUDIT OF PHARMACY BENEFIT MANAGERS. (a) In
23 this section, "pharmacy benefit manager" means a person, other than
24 a pharmacy or pharmacist, who acts as an administrator in
25 connection with pharmacy benefits.

26 (b) A contract with a pharmacy benefit manager entered into
27 with respect to any mail order or specialty pharmacy services

1 program under the jurisdiction of the department must provide that
2 the department, using an auditor selected by the department, may
3 audit:

4 (1) the program's pharmacy benefit claims;

5 (2) the pharmacy benefit manager's contracts with
6 pharmaceutical manufacturers and labelers;

7 (3) the pharmacy benefit manager's utilization
8 management clinical criteria; and

9 (4) mail service purchasing invoices related to
10 benefits provided under the program.

11 (c) This section does not affect the state auditor's
12 authority to access information or conduct an audit.

13 SECTION 3. Subchapter B, Chapter 1551, Insurance Code, is
14 amended by adding Sections 1551.073, 1551.074, 1551.075, and
15 1551.076 to read as follows:

16 Sec. 1551.073. SPECIALTY PHARMACY SERVICES. (a) In this
17 section:

18 (1) "Pharmacy benefit manager" means an administering
19 firm or other person, other than a pharmacy or pharmacist, who acts
20 as an administrator in connection with pharmacy benefits. The term
21 includes an administrator subject to Chapter 4151 who administers
22 pharmacy benefits.

23 (2) "Specialty pharmacy service" means a service
24 offered by a pharmacy benefit manager in relation to benefits that
25 involve chronic conditions, unusually high treatment costs, or
26 management of complex care issues. The term specifically includes
27 the provision of pharmaceutical benefits involving:

1 (A) injectable and infusion therapies;

2 (B) therapies with annual costs to the patient of
3 \$5,000 or more; and

4 (C) therapies requiring complex care.

5 (b) A contract with a pharmacy benefit manager entered into
6 with respect to the group benefits program that includes specialty
7 pharmacy services must provide that the pharmacy benefit manager
8 shall:

9 (1) pass through to the board of trustees for deposit
10 to the credit of the employees life, accident, and health insurance
11 and benefits fund 100 percent of any revenue associated with
12 distribution of a specialty pharmacy product paid by a
13 pharmaceutical manufacturer or labeler to the pharmacy benefit
14 manager;

15 (2) agree to charge the board of trustees on an
16 acquisition cost basis, which may include a dispensing fee, for all
17 specialty pharmacy prescriptions, based on actual inventory costs
18 or wholesale acquisition cost; and

19 (3) provide case management for critical disease
20 conditions, as specified by the contract, and agree not to
21 incorporate the costs of the case management into the costs
22 assessed for drug ingredients for the specialty pharmacy product.

23 Sec. 1551.074. MAIL ORDER PHARMACY SERVICES. (a) In this
24 section:

25 (1) "Mail order pharmacy" means a pharmacy that is
26 licensed as a Class A or Class E pharmacy under Chapter 560,
27 Occupations Code, and that primarily delivers prescription drugs to

1 an enrollee through the United States Postal Service or a
2 commercial delivery service.

3 (2) "Pharmacy benefit manager" means an administering
4 firm or other person, other than a pharmacy or pharmacist, who acts
5 as an administrator in connection with pharmacy benefits. The term
6 includes an administrator subject to Chapter 4151 who administers
7 pharmacy benefits.

8 (b) A contract with a pharmacy benefit manager entered into
9 with respect to the group benefits program that includes pharmacy
10 services must provide that the pharmacy benefit manager shall agree
11 to charge the board of trustees on an acquisition cost basis, which
12 may include a dispensing fee, for all prescriptions filled by a mail
13 order pharmacy, based on actual inventory costs or wholesale
14 acquisition cost.

15 Sec. 1551.075. PHARMACY BENEFIT MANAGERS: DESIGNATION OF
16 CONFIDENTIAL INFORMATION. (a) A pharmacy benefit manager may
17 designate as confidential any information the pharmacy benefit
18 manager is required to disclose to comply with Section 1551.073 or
19 1551.074.

20 (b) Information designated as confidential under this
21 section may not be disclosed by the board of trustees to any person
22 without the consent of the pharmacy benefit manager unless the
23 disclosure is:

- 24 (1) ordered by a court for good cause shown;
25 (2) made under seal in a court filing; or
26 (3) made to the commissioner or the attorney general
27 in connection with an investigation authorized by this code or any

1 other law.

2 Sec. 1551.076. AUDIT OF PHARMACY BENEFIT MANAGERS. (a) In
3 this section, "pharmacy benefit manager" means an administering
4 firm or other person, other than a pharmacy or pharmacist, who acts
5 as an administrator in connection with pharmacy benefits. The term
6 includes an administrator subject to Chapter 4151 who administers
7 pharmacy benefits.

8 (b) A contract with a pharmacy benefit manager entered into
9 with respect to any mail order or specialty pharmacy services
10 program under the jurisdiction of the board of trustees, using an
11 auditor selected by the board of trustees, may audit:

12 (1) the program's pharmacy benefit claims;

13 (2) the pharmacy benefit manager's contracts with
14 pharmaceutical manufacturers and labelers;

15 (3) the pharmacy benefit manager's utilization
16 management clinical criteria; and

17 (4) mail service purchasing invoices related to
18 benefits provided under the program.

19 (c) This section does not affect the state auditor's
20 authority to access information or conduct an audit.

21 SECTION 4. Subchapter B, Chapter 1575, Insurance Code, is
22 amended by adding Sections 1575.062, 1575.063, 1575.064, and
23 1575.065 to read as follows:

24 Sec. 1575.062. SPECIALTY PHARMACY SERVICES. (a) In this
25 section:

26 (1) "Pharmacy benefit manager" means an administering
27 firm or other person, other than a pharmacy or pharmacist, who acts

1 as an administrator in connection with pharmacy benefits. The term
2 includes an administrator subject to Chapter 4151 who administers
3 pharmacy benefits.

4 (2) "Specialty pharmacy service" means a service
5 offered by a pharmacy benefit manager in relation to benefits that
6 involve chronic conditions, unusually high treatment costs, or
7 management of complex care issues. The term specifically includes
8 the provision of pharmaceutical benefits involving:

9 (A) injectable and infusion therapies;

10 (B) therapies with annual costs to the patient of
11 \$5,000 or more; and

12 (C) therapies requiring complex care.

13 (b) A contract with a pharmacy benefit manager entered into
14 with respect to the group program that includes specialty pharmacy
15 services must provide that the pharmacy benefit manager shall:

16 (1) pass through to the trustee for deposit to the
17 credit of the retired school employees group insurance fund 100
18 percent of any revenue associated with distribution of a specialty
19 pharmacy product paid by a pharmaceutical manufacturer or labeler
20 to the pharmacy benefit manager;

21 (2) agree to charge the trustee on an acquisition cost
22 basis, which may include a dispensing fee, for all specialty
23 pharmacy prescriptions, based on actual inventory costs or
24 wholesale acquisition cost; and

25 (3) provide case management for critical disease
26 conditions, as specified by the contract, and agree not to
27 incorporate the costs of the case management into the costs

1 assessed for drug ingredients for the specialty pharmacy product.

2 Sec. 1575.063. MAIL ORDER PHARMACY SERVICES. (a) In this
3 section:

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

9 (2) "Pharmacy benefit manager" means an administering
10 firm or other person, other than a pharmacy or pharmacist, who acts
11 as an administrator in connection with pharmacy benefits. The term
12 includes an administrator subject to Chapter 4151 who administers
13 pharmacy benefits.

14 (b) A contract with a pharmacy benefit manager entered into
15 with respect to the group program that includes pharmacy services
16 must provide that the pharmacy benefit manager shall agree to
17 charge the trustee on an acquisition cost basis, which may include a
18 dispensing fee, for all prescriptions filled by a mail order
19 pharmacy, based on actual inventory costs or wholesale acquisition
20 cost.

21 Sec. 1575.064. PHARMACY BENEFIT MANAGERS: DESIGNATION OF
22 CONFIDENTIAL INFORMATION. (a) A pharmacy benefit manager may
23 designate as confidential any information the pharmacy benefit
24 manager is required to disclose to comply with Section 1575.062 or
25 1575.063.

26 (b) Information designated as confidential under this
27 section may not be disclosed by the trustee to any person without

1 the consent of the pharmacy benefit manager unless the disclosure
2 is:

- 3 (1) ordered by a court for good cause shown;
4 (2) made under seal in a court filing; or
5 (3) made to the commissioner or the attorney general
6 in connection with an investigation authorized by this code or any
7 other law.

8 Sec. 1575.065. AUDIT OF PHARMACY BENEFIT MANAGERS. (a) In
9 this section, "pharmacy benefit manager" means a person, other than
10 a pharmacy or pharmacist, who acts as an administrator in
11 connection with pharmacy benefits. The term includes an
12 administrator subject to Chapter 4151 who administers pharmacy
13 benefits.

14 (b) A contract with a pharmacy benefit manager entered into
15 with respect to any mail order or specialty pharmacy services
16 program under the jurisdiction of the trustee must provide that the
17 trustee, using an auditor selected by the trustee, may audit:

- 18 (1) the program's pharmacy benefit claims;
19 (2) the pharmacy benefit manager's contracts with
20 pharmaceutical manufacturers and labelers;
21 (3) the pharmacy benefit manager's utilization
22 management clinical criteria; and

23 (4) mail service purchasing invoices related to
24 benefits provided under the program.

25 (c) This section does not affect the state auditor's
26 authority to access information or conduct an audit.

27 SECTION 5. Subchapter B, Chapter 1579, Insurance Code, is

1 amended by adding Sections 1579.061, 1579.062, 1579.063, and
2 1579.064 to read as follows:

3 Sec. 1579.061. SPECIALTY PHARMACY SERVICES. (a) In this
4 section:

5 (1) "Pharmacy benefit manager" means an administering
6 firm or other person, other than a pharmacy or pharmacist, who acts
7 as an administrator in connection with pharmacy benefits. The term
8 includes an administrator subject to Chapter 4151 who administers
9 pharmacy benefits.

10 (2) "Specialty pharmacy service" means a service
11 offered by a pharmacy benefit manager in relation to benefits that
12 involve chronic conditions, unusually high treatment costs, or
13 management of complex care issues. The term specifically includes
14 the provision of pharmaceutical benefits involving:

15 (A) injectable and infusion therapies;

16 (B) therapies with annual costs to the patient of
17 \$5,000 or more; and

18 (C) therapies requiring complex care.

19 (b) A contract with a pharmacy benefit manager entered into
20 with respect to the program that includes specialty pharmacy
21 services must provide that the pharmacy benefit manager shall:

22 (1) pass through to the trustee for deposit to the
23 credit of the Texas school employees uniform group coverage trust
24 fund 100 percent of any revenue associated with distribution of a
25 specialty pharmacy product paid by a pharmaceutical manufacturer or
26 labeler to the pharmacy benefit manager;

27 (2) agree to charge the trustee on an acquisition cost

1 basis, which may include a dispensing fee, for all specialty
2 pharmacy prescriptions, based on actual inventory costs or
3 wholesale acquisition cost; and

4 (3) provide case management for critical disease
5 conditions, as specified by the contract, and agree not to
6 incorporate the costs of the case management into the costs
7 assessed for drug ingredients for the specialty pharmacy product.

8 Sec. 1579.062. MAIL ORDER PHARMACY SERVICES. (a) In this
9 section:

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

15 (2) "Pharmacy benefit manager" means an administering
16 firm or other person, other than a pharmacy or pharmacist, who acts
17 as an administrator in connection with pharmacy benefits. The term
18 includes an administrator subject to Chapter 4151 who administers
19 pharmacy benefits.

20 (b) A contract with a pharmacy benefit manager entered into
21 with respect to the program that includes pharmacy services must
22 provide that the pharmacy benefit manager shall agree to charge the
23 trustee on an acquisition cost basis, which may include a
24 dispensing fee, for all prescriptions filled by a mail order
25 pharmacy, based on actual inventory costs or wholesale acquisition
26 cost.

27 Sec. 1579.063. PHARMACY BENEFIT MANAGERS: DESIGNATION OF

1 CONFIDENTIAL INFORMATION. (a) A pharmacy benefit manager may
2 designate as confidential any information the pharmacy benefit
3 manager is required to disclose to comply with Section 1579.061 or
4 1579.062.

5 (b) Information designated as confidential under this
6 section may not be disclosed by the trustee to any person without
7 the consent of the pharmacy benefit manager unless the disclosure
8 is:

9 (1) ordered by a court for good cause shown;

10 (2) made under seal in a court filing; or

11 (3) made to the commissioner or the attorney general
12 in connection with an investigation authorized by this code or any
13 other law.

14 Sec. 1579.064. AUDIT OF PHARMACY BENEFIT MANAGERS. (a) In
15 this section, "pharmacy benefit manager" means an administering
16 firm or other person, other than a pharmacy or pharmacist, who acts
17 as an administrator in connection with pharmacy benefits. The term
18 includes an administrator subject to Chapter 4151 who administers
19 pharmacy benefits.

20 (b) A contract with a pharmacy benefit manager entered into
21 with respect to any mail order or specialty pharmacy services
22 program under the jurisdiction of the trustee must provide that the
23 trustee, using an auditor selected by the trustee, may audit:

24 (1) the program's pharmacy benefit claims;

25 (2) the pharmacy benefit manager's contracts with
26 pharmaceutical manufacturers and labelers;

27 (3) the pharmacy benefit manager's utilization

1 management clinical criteria; and

2 (4) mail service purchasing invoices related to
3 benefits provided under the program.

4 (c) This section does not affect the state auditor's
5 authority to access information or conduct an audit.

6 SECTION 6. The change in law made by this Act applies only
7 to a contract with a pharmacy benefit manager executed or renewed on
8 or after the effective date of this Act.

9 SECTION 7. This Act takes effect immediately if it receives
10 a vote of two-thirds of all the members elected to each house, as
11 provided by Section 39, Article III, Texas Constitution. If this
12 Act does not receive the vote necessary for immediate effect, this
13 Act takes effect September 1, 2007.