

By: Kolkhorst, Gonzalez Toureilles,
Miller of Erath, Hopson, Homer, et al.

H.B. No. 4596

Substitute the following for H.B. No. 4596:

By: McReynolds

C.S.H.B. No. 4596

A BILL TO BE ENTITLED

AN ACT

relating to certain contracts between pharmacy benefit managers and the Employees Retirement System of Texas, the Teacher Retirement System of Texas, The Texas A&M University System, or The University of Texas System.

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

SECTION 1. Subchapter B, Chapter 1551, Insurance Code, is amended by adding Section 1551.067 to read as follows:

Sec. 1551.067. PHARMACY BENEFIT MANAGER CONTRACTS. (a) In awarding a contract to provide pharmacy benefit manager services under this chapter the board of trustees is not required to select the lowest bid, but must select a contract that meets the criteria established by this section.

(b) The contract must state whether the pharmacy benefit manager may or may not engage in therapeutic interchange by substituting a prescription drug with a different prescription drug preferred by the pharmacy benefit manager. If the contract authorizes therapeutic interchange as described by this subsection, the contract must provide that the pharmacy benefit manager shall maintain documentation of each instance in which therapeutic interchange is used.

(c) The contract must state that the pharmacy benefit manager shall disclose in writing the financial and medical reasons for the addition, removal, or change in placement of a prescription

1 drug from the drug formulary used by the pharmacy benefit manager.
2 The disclosure required by this subsection must be made not later
3 than the 30th day before the date that the addition, removal, or
4 change in placement becomes effective.

5 (d) The contract must identify the specialty drugs on the
6 drug formulary used by the pharmacy benefit manager and state the
7 specialty drug's associated costs, discounts, and other fees that
8 apply to the pharmacy benefit manager's services performed under
9 the contract.

10 (e) The contract must disclose any policy, practice, or
11 business relationship of the pharmacy benefit manager that could
12 conflict with the performance of the pharmacy benefit manager's
13 duties under the contract.

14 (f) The contract must describe cost savings initiatives
15 used by the pharmacy benefit manager, including the methodology and
16 data used to compute any rebate amount that the board of trustees
17 receives from the pharmacy benefit manager.

18 (g) The contract must include a statement defining the
19 maximum allowable cost, or MAC, price list to be used by the
20 pharmacy benefit manager in performing the contract.

21 (h) The contract must identify and label the specific
22 information contained in the contract that is considered
23 proprietary information belonging to the pharmacy benefit manager.

24 (i) The contract must state whether the pharmacy benefit
25 manager has a revenue-sharing agreement concerning the sale of data
26 related to the services performed under the contract or whether the
27 data can be sold by the pharmacy benefit manager. If data may be

1 sold, the contract must:

2 (1) disclose the conditions under which the pharmacy
3 benefit manager may sell the data; and

4 (2) state that the pharmacy benefit manager may not
5 disclose any data in connection with the sale of the data before the
6 30th day after the date the pharmacy benefit manager has provided
7 written notice of that sale to the board of trustees.

8 (j) The contract must state that:

9 (1) the board of trustees is entitled to audit the
10 pharmacy benefit manager to verify costs and discounts associated
11 with drug claims, pharmacy benefit manager compliance with contract
12 requirements, and services provided by subcontractors;

13 (2) the audit must be conducted by an independent
14 auditor in accordance with established auditing standards; and

15 (3) to conduct the audit, the board of trustees and the
16 independent auditor are entitled access to information related to
17 the services and the costs associated with the services performed
18 under the contract, including access to the pharmacy benefit
19 manager's facilities, records, contracts, medical records, and
20 agreements with subcontractors.

21 (k) The contract must define the information that the
22 pharmacy benefit manager is required to provide to the board of
23 trustees concerning the audit of the retail, independent, and mail
24 order pharmacies performing services under the contract and
25 describe how the results of these audits must be reported to the
26 board of trustees, including how often the results must be
27 reported. The contract must state whether the pharmacy benefit

1 manager is required to return recovered overpayments to the board
2 of trustees.

3 (1) The contract must state that any audit of a mail order
4 pharmacy owned by the pharmacy benefit manager must be conducted by
5 an independent auditor selected by the board of trustees in
6 accordance with established auditing standards.

7 SECTION 2. Subchapter C, Chapter 1575, Insurance Code, is
8 amended by adding Section 1575.110 to read as follows:

9 Sec. 1575.110. PHARMACY BENEFIT MANAGER CONTRACTS. (a) In
10 awarding a contract to provide pharmacy benefit manager services
11 under this chapter the trustee is not required to select the lowest
12 bid, but must select a contract that meets the criteria established
13 by this section.

14 (b) The contract must state whether the pharmacy benefit
15 manager may or may not engage in therapeutic interchange by
16 substituting a prescription drug with a different prescription drug
17 preferred by the pharmacy benefit manager. If the contract
18 authorizes therapeutic interchange as described by this
19 subsection, the contract must provide that the pharmacy benefit
20 manager shall maintain documentation of each instance in which
21 therapeutic interchange is used.

22 (c) The contract must state that the pharmacy benefit
23 manager shall disclose in writing the financial and medical reasons
24 for the addition, removal, or change in placement of a prescription
25 drug from the drug formulary used by the pharmacy benefit manager.
26 The disclosure required by this subsection must be made not later
27 than the 30th day before the date that the addition, removal, or

1 change in placement becomes effective.

2 (d) The contract must identify the specialty drugs on the
3 drug formulary used by the pharmacy benefit manager and state the
4 specialty drug's associated costs, discounts, and other fees that
5 apply to the pharmacy benefit manager's services performed under
6 the contract.

7 (e) The contract must disclose any policy, practice, or
8 business relationship of the pharmacy benefit manager that could
9 conflict with the performance of the pharmacy benefit manager's
10 duties under the contract.

11 (f) The contract must describe cost savings initiatives
12 used by the pharmacy benefit manager, including the methodology and
13 data used to compute any rebate amount that the trustee receives
14 from the pharmacy benefit manager.

15 (g) The contract must include a statement defining the
16 maximum allowable cost, or MAC, price list to be used by the
17 pharmacy benefit manager in performing the contract.

18 (h) The contract must identify and label the specific
19 information contained in the contract that is considered
20 proprietary information belonging to the pharmacy benefit manager.

21 (i) The contract must state whether the pharmacy benefit
22 manager has a revenue-sharing agreement concerning the sale of data
23 related to the services performed under the contract or whether the
24 data can be sold by the pharmacy benefit manager. If data may be
25 sold, the contract must:

26 (1) disclose the conditions under which the pharmacy
27 benefit manager may sell the data; and

1 (2) state that the pharmacy benefit manager may not
2 disclose any data in connection with the sale of the data before the
3 30th day after the date the pharmacy benefit manager has provided
4 written notice of that sale to the trustee.

5 (j) The contract must state that:

6 (1) the trustee is entitled to audit the pharmacy
7 benefit manager to verify costs and discounts associated with drug
8 claims, pharmacy benefit manager compliance with contract
9 requirements, and services provided by subcontractors;

10 (2) the audit must be conducted by an independent
11 auditor in accordance with established auditing standards; and

12 (3) to conduct the audit, the trustee and the
13 independent auditor are entitled access to information related to
14 the services and the costs associated with the services performed
15 under the contract, including access to the pharmacy benefit
16 manager's facilities, records, contracts, medical records, and
17 agreements with subcontractors.

18 (k) The contract must define the information that the
19 pharmacy benefit manager is required to provide to the trustee
20 concerning the audit of the retail, independent, and mail order
21 pharmacies performing services under the contract and describe how
22 the results of these audits must be reported to the trustee,
23 including how often the results must be reported. The contract must
24 state whether the pharmacy benefit manager is required to return
25 recovered overpayments to the trustee.

26 (l) The contract must state that any audit of a mail order
27 pharmacy owned by the pharmacy benefit manager must be conducted by

1 an independent auditor selected by the trustee in accordance with
2 established auditing standards.

3 SECTION 3. Subchapter B, Chapter 1579, Insurance Code, is
4 amended by adding Section 1579.057 to read as follows:

5 Sec. 1579.057. PHARMACY BENEFIT MANAGER CONTRACTS. (a) In
6 awarding a contract to provide pharmacy benefit manager services
7 under this chapter the trustee is not required to select the lowest
8 bid, but must select a contract that meets the criteria established
9 by this section.

10 (b) The contract must state whether the pharmacy benefit
11 manager may or may not engage in therapeutic interchange by
12 substituting a prescription drug with a different prescription drug
13 preferred by the pharmacy benefit manager. If the contract
14 authorizes therapeutic interchange as described by this
15 subsection, the contract must provide that the pharmacy benefit
16 manager shall maintain documentation of each instance in which
17 therapeutic interchange is used.

18 (c) The contract must state that the pharmacy benefit
19 manager shall disclose in writing the financial and medical reasons
20 for the addition, removal, or change in placement of a prescription
21 drug from the drug formulary used by the pharmacy benefit manager.
22 The disclosure required by this subsection must be made not later
23 than the 30th day before the date that the addition, removal, or
24 change in placement becomes effective.

25 (d) The contract must identify the specialty drugs on the
26 drug formulary used by the pharmacy benefit manager and state the
27 specialty drug's associated costs, discounts, and other fees that

1 apply to the pharmacy benefit manager's services performed under
2 the contract.

3 (e) The contract must disclose any policy, practice, or
4 business relationship of the pharmacy benefit manager that could
5 conflict with the performance of the pharmacy benefit manager's
6 duties under the contract.

7 (f) The contract must describe cost savings initiatives
8 used by the pharmacy benefit manager, including the methodology and
9 data used to compute any rebate amount that the trustee receives
10 from the pharmacy benefit manager.

11 (g) The contract must include a statement defining the
12 maximum allowable cost, or MAC, price list to be used by the
13 pharmacy benefit manager in performing the contract.

14 (h) The contract must identify and label the specific
15 information contained in the contract that is considered
16 proprietary information belonging to the pharmacy benefit manager.

17 (i) The contract must state whether the pharmacy benefit
18 manager has a revenue-sharing agreement concerning the sale of data
19 related to the services performed under the contract or whether the
20 data can be sold by the pharmacy benefit manager. If data may be
21 sold, the contract must:

22 (1) disclose the conditions under which the pharmacy
23 benefit manager may sell the data; and

24 (2) state that the pharmacy benefit manager may not
25 disclose any data in connection with the sale of the data before the
26 30th day after the date the pharmacy benefit manager has provided
27 written notice of that sale to the trustee.

1 (j) The contract must state that:

2 (1) the trustee is entitled to audit the pharmacy
3 benefit manager to verify costs and discounts associated with drug
4 claims, pharmacy benefit manager compliance with contract
5 requirements, and services provided by subcontractors;

6 (2) the audit must be conducted by an independent
7 auditor in accordance with established auditing standards; and

8 (3) to conduct the audit, the trustee and the
9 independent auditor are entitled access to information related to
10 the services and the costs associated with the services performed
11 under the contract, including access to the pharmacy benefit
12 manager's facilities, records, contracts, medical records, and
13 agreements with subcontractors.

14 (k) The contract must define the information that the
15 pharmacy benefit manager is required to provide to the trustee
16 concerning the audit of the retail, independent, and mail order
17 pharmacies performing services under the contract and describe how
18 the results of these audits must be reported to the trustee,
19 including how often the results must be reported. The contract must
20 state whether the pharmacy benefit manager is required to return
21 recovered overpayments to the trustee.

22 (l) The contract must state that any audit of a mail order
23 pharmacy owned by the pharmacy benefit manager must be conducted by
24 an independent auditor selected by the trustee in accordance with
25 established auditing standards.

26 SECTION 4. Subchapter B, Chapter 1601, Insurance Code, is
27 amended by adding Section 1601.064 to read as follows:

1 Sec. 1601.064. PHARMACY BENEFIT MANAGER CONTRACTS. (a) In
2 awarding a contract to provide pharmacy benefit manager services
3 under this chapter a system is not required to select the lowest
4 bid, but must select a contract that meets the criteria established
5 by this section.

6 (b) The contract must state whether the pharmacy benefit
7 manager may or may not engage in therapeutic interchange by
8 substituting a prescription drug with a different prescription drug
9 preferred by the pharmacy benefit manager. If the contract
10 authorizes therapeutic interchange as described by this
11 subsection, the contract must provide that the pharmacy benefit
12 manager shall maintain documentation of each instance in which
13 therapeutic interchange is used.

14 (c) The contract must state that the pharmacy benefit
15 manager shall disclose in writing the financial and medical reasons
16 for the addition, removal, or change in placement of a prescription
17 drug from the drug formulary used by the pharmacy benefit manager.
18 The disclosure required by this subsection must be made not later
19 than the 30th day before the date that the addition, removal, or
20 change in placement becomes effective.

21 (d) The contract must identify the specialty drugs on the
22 drug formulary used by the pharmacy benefit manager and state the
23 specialty drug's associated costs, discounts, and other fees that
24 apply to the pharmacy benefit manager's services performed under
25 the contract.

26 (e) The contract must disclose any policy, practice, or
27 business relationship of the pharmacy benefit manager that could

1 conflict with the performance of the pharmacy benefit manager's
2 duties under the contract.

3 (f) The contract must describe cost savings initiatives
4 used by the pharmacy benefit manager, including the methodology and
5 data used to compute any rebate amount that the system receives from
6 the pharmacy benefit manager.

7 (g) The contract must include a statement defining the
8 maximum allowable cost, or MAC, price list to be used by the
9 pharmacy benefit manager in performing the contract.

10 (h) The contract must identify and label the specific
11 information contained in the contract that is considered
12 proprietary information belonging to the pharmacy benefit manager.

13 (i) The contract must state whether the pharmacy benefit
14 manager has a revenue-sharing agreement concerning the sale of data
15 related to the services performed under the contract or whether the
16 data can be sold by the pharmacy benefit manager. If data may be
17 sold, the contract must:

18 (1) disclose the conditions under which the pharmacy
19 benefit manager may sell the data; and

20 (2) state that the pharmacy benefit manager may not
21 disclose any data in connection with the sale of the data before the
22 30th day after the date the pharmacy benefit manager has provided
23 written notice of that sale to the system.

24 (j) The contract must state that:

25 (1) the system is entitled to audit the pharmacy
26 benefit manager to verify costs and discounts associated with drug
27 claims, pharmacy benefit manager compliance with contract

1 requirements, and services provided by subcontractors;

2 (2) the audit must be conducted by an independent
3 auditor in accordance with established auditing standards; and

4 (3) to conduct the audit, the system and the
5 independent auditor are entitled access to information related to
6 the services and the costs associated with the services performed
7 under the contract, including access to the pharmacy benefit
8 manager's facilities, records, contracts, medical records, and
9 agreements with subcontractors.

10 (k) The contract must define the information that the
11 pharmacy benefit manager is required to provide to the system
12 concerning the audit of the retail, independent, and mail order
13 pharmacies performing services under the contract and describe how
14 the results of these audits must be reported to the system,
15 including how often the results must be reported. The contract must
16 state whether the pharmacy benefit manager is required to return
17 recovered overpayments to the system.

18 (l) The contract must state that any audit of a mail order
19 pharmacy owned by the pharmacy benefit manager must be conducted by
20 an independent auditor selected by the system in accordance with
21 established auditing standards.

22 SECTION 5. The change in law made by this Act applies only
23 to a contract with a pharmacy benefit manager executed or renewed on
24 or after the effective date of this Act.

25 SECTION 6. This Act takes effect September 1, 2009.