

By: Watson

S.B. No. 1433

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 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 group hospital service contract, or an individual or group evidence

1 of coverage or similar coverage document that is offered or  
2 administered by:

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

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

7 Sec. 1560.003. MULTIPLE-MONTH SUPPLY OF PRESCRIPTION DRUG.

8 (a) In this section, "multiple-month supply" means a supply for 60  
9 or more days.

10 (b) Notwithstanding any other law, an issuer of a health  
11 benefit plan that provides pharmacy benefits to enrollees must  
12 allow an enrollee to obtain from a community retail pharmacy a  
13 multiple-month supply of any prescription drug under the same terms  
14 and conditions applicable when the prescription drug is obtained  
15 from a mail order pharmacy, if the community retail pharmacy agrees  
16 to accept reimbursement on exactly the same terms and conditions  
17 that apply to a mail order pharmacy.

18 (c) This section does not require:

19 (1) the issuer of a health benefit plan to contract  
20 with:

21 (A) a retail pharmacy that does not agree to  
22 accept reimbursement on exactly the same terms and conditions that  
23 apply to a mail order pharmacy; or

24 (B) more than one mail order pharmacy; or

25 (2) a community retail pharmacy to:

26 (A) provide a multiple-month supply of a  
27 prescription drug under the same terms and conditions applicable

1 when the prescription drug is obtained from a mail order pharmacy;  
2 or

3 (B) agree to accept reimbursement on exactly the  
4 same terms and conditions that apply to a mail order pharmacy.

5 Sec. 1560.004. PRESCRIPTION DRUG REIMBURSEMENT RATES. (a)  
6 An issuer of a health benefit plan that provides pharmacy benefits  
7 to enrollees shall reimburse pharmacies participating in the health  
8 plan using prescription drug reimbursement rates, for both brand  
9 name and generic prescription drugs, that are based on a current and  
10 nationally recognized benchmark index that includes average  
11 wholesale price and maximum allowable cost.

12 (b) Regardless of whether a pharmacy is a mail order  
13 pharmacy or a community retail pharmacy, an issuer of a health  
14 benefit plan shall use the same benchmark index, including the same  
15 average wholesale price, maximum allowable cost, and national  
16 prescription drug codes, to reimburse all pharmacies participating  
17 in the health benefit plan.

18 Sec. 1560.005. ACQUISITION COSTS AND REBATES. An issuer of  
19 a health benefit plan that contracts with a third-party  
20 administrator, pharmacy benefit manager, or other entity to manage  
21 pharmacy benefits provided to enrollees through a mail order  
22 pharmacy shall require the managing entity to:

23 (1) provide the issuer of the health benefit plan with  
24 an annual electronic report containing:

25 (A) the actual acquisition cost of all drugs  
26 purchased by the managing entity in relation to the pharmacy  
27 benefits under the health benefit plan; and

1           (B) an identification of the source, type, and  
2 amount of all rebates, rebate administrative fees, and other  
3 monetary benefits received by the managing entity from a drug  
4 manufacturer in relation to the pharmacy benefits under the health  
5 benefit plan; and

6           (2) not later than the 30th day after the date the  
7 managing entity receives a rebate, rebate administrative fee, or  
8 other monetary benefit from a drug manufacturer in relation to the  
9 pharmacy benefits under the health benefit plan, reimburse or  
10 credit to the issuer of the health benefit plan an amount equal to  
11 the amount of the rebate, rebate administrative fee, or other  
12 monetary benefit received by the managing entity.

13           Sec. 1560.006. PHARMACY BENEFIT MANAGERS: DESIGNATION OF  
14 CONFIDENTIAL INFORMATION. (a) A pharmacy benefit manager may  
15 designate as confidential any information the pharmacy benefit  
16 manager is required to disclose under Section 1560.005.

17           (b) Information designated as confidential under this  
18 section may not be disclosed to any person without the consent of  
19 the pharmacy benefit manager unless the disclosure is:

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

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

22                   (3) made to the commissioner of insurance or the  
23 attorney general in connection with an investigation authorized by  
24 this code, the Government Code, or any other law.

25           Sec. 1560.007. COMPLAINT AND ENFORCEMENT; ADMINISTRATIVE  
26 PENALTIES. (a) The department shall investigate any complaint  
27 that the department receives concerning conduct regulated by this

1 chapter.

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

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

16 SECTION 2. Section 1551.224, Insurance Code, is amended to  
17 read as follows:

18 Sec. 1551.224. MAIL ORDER REQUIREMENT FOR PRESCRIPTION DRUG  
19 COVERAGE PROHIBITED. (a) The board of trustees or a health  
20 benefit plan under this chapter that provides benefits for  
21 prescription drugs may not require a participant in the group  
22 benefits program to purchase a prescription drug through a mail  
23 order program.

24 (b) Except as provided by Subsection (c), the [The] board of  
25 trustees or a health benefit plan shall require that a participant  
26 who chooses to obtain a prescription drug through a retail pharmacy  
27 or other method other than by mail order pay a deductible,

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

4 (c) The board of trustees or a health benefit plan may not  
5 require a participant who obtains a multiple-month supply of a  
6 prescription drug from a retail pharmacy under Section 1560.003 to  
7 pay a deductible, copayment, coinsurance, or other cost-sharing  
8 obligation that differs from the amount the participant pays for a  
9 multiple-month supply of that drug through a mail order program.

10 SECTION 3. The change in law made by this Act applies only  
11 to a health benefit plan that is delivered, issued for delivery, or  
12 renewed on or after January 1, 2010. A health benefit plan that is  
13 delivered, issued for delivery, or renewed before January 1, 2010,  
14 is covered by the law in effect at the time the policy was  
15 delivered, issued for delivery, or renewed, and that law is  
16 continued in effect for that purpose.

17 SECTION 4. This Act takes effect September 1, 2009.