

By: Schwertner

S.B. No. 322

A BILL TO BE ENTITLED

AN ACT

relating to access to pharmacists, pharmacies, and pharmaceutical care under certain health benefit plans.

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

SECTION 1. Chapter 1451, Insurance Code, is amended by adding Subchapter K to read as follows:

SUBCHAPTER K. ACCESS TO PHARMACIES, PHARMACISTS, AND PHARMACEUTICAL CARE

Sec. 1451.501. DEFINITIONS. In this subchapter:

(1) "Drug," "pharmaceutical care," "pharmacist," "pharmacy," and "prescription drug" have the meanings assigned by Section 551.003, Occupations Code.

(2) "Enrollee" means an individual who is covered under a health benefit plan, including a covered dependent.

(3) "Pharmacy benefit manager" has the meaning assigned by Section 4151.151.

Sec. 1451.502. APPLICABILITY OF SUBCHAPTER. (a) Except as provided by Section 1451.503, this subchapter applies only to a health benefit plan that provides benefits for medical, surgical, or other treatment expenses incurred as a result of a health condition, an accident, sickness, or substance abuse, 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

1 document that is offered by:

2 (1) an insurance company;

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

5 (3) a health maintenance organization operating under
6 Chapter 843;

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

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

11 (6) a stipulated premium company operating under
12 Chapter 884;

13 (7) a fraternal benefit society operating under
14 Chapter 885;

15 (8) a Lloyd's plan operating under Chapter 941; or

16 (9) an exchange operating under Chapter 942.

17 (b) Notwithstanding any provision in Chapter 1551, 1575,
18 1579, or 1601 or any other law, this chapter applies to health
19 benefit plan coverage provided under:

20 (1) Chapter 1551;

21 (2) Chapter 1575;

22 (3) Chapter 1579; and

23 (4) Chapter 1601.

24 (c) Notwithstanding Section 1501.251 or any other law, this
25 chapter applies to coverage under a small employer health benefit
26 plan subject to Chapter 1501.

27 Sec. 1451.503. EXCEPTION TO APPLICABILITY OF SUBCHAPTER.

1 This subchapter does not apply to a self-insured, self-funded, or
2 other employee welfare benefit plan that is exempt from state
3 regulation under the Employee Retirement Income Security Act of
4 1974 (29 U.S.C. Section 1001 et seq.).

5 Sec. 1451.504. SELECTION OF PHARMACIST AND PHARMACY. A
6 health benefit plan issuer or a pharmacy benefit manager
7 administering pharmacy benefits under a health benefit plan may
8 not:

9 (1) prohibit or limit an enrollee from selecting a
10 pharmacist or pharmacy of the enrollee's choice to furnish
11 prescription drugs or pharmaceutical care covered by the health
12 benefit plan; or

13 (2) interfere with an enrollee's selection of a
14 pharmacist or pharmacy to furnish prescription drugs or
15 pharmaceutical care covered by the health benefit plan.

16 Sec. 1451.505. PARTICIPATION OF PHARMACISTS AND
17 PHARMACIES. (a) Subject to Subsection (b), a health benefit plan
18 issuer or a pharmacy benefit manager administering pharmacy
19 benefits under a health benefit plan may not deny a pharmacist or
20 pharmacy the right to participate as a provider or preferred
21 provider, as applicable, under the health benefit plan if the
22 pharmacist or pharmacy agrees to:

23 (1) provide prescription drugs and pharmaceutical
24 care in accordance with the terms of the health benefit plan; and

25 (2) accept the administrative, financial, and
26 professional conditions that apply to pharmacists and pharmacies
27 who have been designated by the health benefit plan or the pharmacy

1 benefit manager as providers or preferred providers, as applicable,
2 under the health benefit plan.

3 (b) The conditions described by Subsection (a)(2) must be
4 applied uniformly to all pharmacists and pharmacies who have been
5 designated by the health benefit plan or the pharmacy benefit
6 manager as providers or preferred providers, as applicable, under
7 the health benefit plan.

8 Sec. 1451.506. MANDATORY PARTICIPATION PROHIBITED. A
9 health benefit plan issuer or a pharmacy benefit manager
10 administering pharmacy benefits under a health benefit plan may not
11 require a pharmacist or pharmacy to participate as a provider or
12 preferred provider under a health benefit plan as a condition of
13 participating as a provider or preferred provider under another
14 health benefit plan.

15 Sec. 1451.507. DOSAGE AND QUANTITY REQUIREMENTS. (a) A
16 health benefit plan issuer or a pharmacy benefit manager
17 administering pharmacy benefits under a health benefit plan may not
18 require an enrollee to obtain or request a specific quantity or
19 dosage supply of prescription drugs.

20 (b) Notwithstanding Subsection (a), an enrollee's physician
21 or other prescribing health care provider may prescribe
22 prescription drugs in a quantity or dosage supply the physician or
23 provider determines appropriate and that is in compliance with
24 state and federal statutes.

25 Sec. 1451.508. COST SAVING MEASURES ALLOWED. (a) Subject
26 to Subsection (b), this subchapter does not prohibit a health
27 benefit plan issuer or pharmacy benefit manager administering

1 pharmacy benefits under a health benefit plan from, in an effort to
2 achieve cost savings to the health benefit plan or the enrollee:

3 (1) limiting the quantity or dosage supply of a drug
4 covered under the plan; or

5 (2) providing a financial incentive to encourage an
6 enrollee or physician or other prescribing health care provider to
7 use certain drugs in certain quantities.

8 (b) The quantity or dosage limitations and the financial
9 incentives described by Subsection (a) must be applied or provided
10 uniformly to all pharmacists and pharmacies who have been
11 designated by the health benefit plan or pharmacy benefit manager
12 as providers or preferred providers, as applicable, under the
13 health benefit plan.

14 Sec. 1451.509. PHARMACY BENEFIT CARD PROGRAM. This
15 subchapter does not prohibit a health benefit plan issuer or
16 pharmacy benefit manager administering pharmacy benefits under a
17 health benefit plan from establishing or administering a pharmacy
18 benefit card program that is a "discount health care program" for
19 purposes of Chapter 562 that authorizes an enrollee to obtain
20 prescription drugs and pharmaceutical care from designated
21 providers.

22 Sec. 1451.510. APPLICATION AND RENEWAL FEES. This
23 subchapter does not prohibit a health benefit plan issuer or
24 pharmacy benefit manager administering pharmacy benefits under a
25 health benefit plan from establishing reasonable and uniform
26 application and renewal fees for a pharmacist or pharmacy to
27 participate as a provider or preferred provider, as applicable,

1 under the health benefit plan.

2 Sec. 1451.511. COVERAGE NOT REQUIRED. This subchapter does
3 not require a health benefit plan to provide coverage for drugs or
4 pharmaceutical care.

5 Sec. 1451.512. CONFLICTING CONTRACT PROVISION VOID. A
6 provision of a health benefit plan or of a contract with a pharmacy
7 benefit manager that conflicts with this subchapter is void to the
8 extent of the conflict.

9 Sec. 1451.513. INJUNCTIVE RELIEF. A pharmacist, pharmacy,
10 or enrollee adversely affected by a violation of this subchapter
11 may bring suit in district court for injunctive relief to enforce
12 this subchapter.

13 Sec. 1451.514. DEPARTMENT MONITORING. The commissioner
14 shall monitor health benefit plans and pharmacy benefit managers to
15 ensure compliance with this subchapter.

16 SECTION 2. Section 843.303(b), Insurance Code, is amended
17 to read as follows:

18 (b) Unless otherwise limited by Subchapter K, Chapter 1451
19 [Article 21.52B], this section does not prohibit a health
20 maintenance organization from rejecting an initial application
21 from a physician or provider based on the determination that the
22 plan has sufficient qualified physicians or providers.

23 SECTION 3. Section 843.304(c), Insurance Code, is amended
24 to read as follows:

25 (c) This section does not require that a health maintenance
26 organization:

27 (1) use a particular type of provider in its

1 operation;

2 (2) accept each provider of a category or type, except
3 as provided by Subchapter K, Chapter 1451 [~~Article 21.52B~~]; or

4 (3) contract directly with providers of a particular
5 category or type.

6 SECTION 4. Article 21.52B, Insurance Code, is repealed.

7 SECTION 5. This Act applies only to a health benefit plan
8 that is delivered, issued for delivery, or renewed on or after
9 January 1, 2016. A health benefit plan delivered, issued for
10 delivery, or renewed before January 1, 2016, is governed by the law
11 as it existed immediately before the effective date of this Act, and
12 that law is continued in effect for that purpose.

13 SECTION 6. This Act takes effect September 1, 2015.