

## **BILL ANALYSIS**

C.S.H.B. 2817  
By: Lucio III  
Insurance  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

It has been suggested that pharmacy benefit managers engage in multiple practices that create barriers to fair competition for community pharmacies and impede the ability of those pharmacies to meet the needs of their patients. C.S.H.B. 2817 seeks to address concerns about those practices by setting out provisions relating to the contractual relationship between a pharmacist or pharmacy and a health benefit plan issuer or pharmacy benefit manager.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 2817 amends the Insurance Code to prohibit a health benefit plan issuer or pharmacy benefit manager from directly or indirectly reducing the amount of a claim payment to a pharmacist or pharmacy after adjudication of the claim through the use of an aggregated effective rate, a quality assurance program, other direct or indirect remuneration fee, or otherwise, except in accordance with an audit. The bill expressly does not prohibit a health benefit plan issuer or pharmacy benefit manager from increasing a claim payment amount after adjudication of the claim.

C.S.H.B. 2817 prohibits a pharmacy benefit manager from paying an affiliated pharmacist or pharmacy a reimbursement amount that is more than the amount the pharmacy benefit manager pays a nonaffiliated pharmacist or pharmacy for the same pharmacist service. The bill requires a pharmacy benefit network contract to specify or reference a separate fee schedule and requires the fee schedule to be provided electronically in an easily accessible and complete spreadsheet format and, on request, in writing to each contracted pharmacist and pharmacy. The bill sets out requirements for the contents of the fee schedule.

C.S.H.B. 2817 entitles a pharmacist or pharmacy that is a member of a pharmacy services administrative organization that enters into a contract on a pharmacist's or pharmacy's behalf to receive from the pharmacy services administrative organization a copy of the contract provisions applicable to the pharmacist or pharmacy, including each provision relating to the pharmacist's or pharmacy's rights and obligations under the contract.

C.S.H.B. 2817 prohibits the following from being conditions of a contract between a health benefit plan issuer or pharmacy benefit manager and a pharmacist or pharmacy:

- prohibiting the pharmacist or pharmacy from mailing or delivering a drug to a patient on the patient's request, to the extent permitted by law;
- prohibiting the pharmacist or pharmacy from charging a shipping and handling fee to a patient requesting a prescription be mailed or delivered if the pharmacist or pharmacy discloses to the patient before the delivery that the fee will be charged and may not be reimbursable;
- requiring additional or more stringent certain pharmacist or pharmacy accreditation standards or recertification requirements than federal and state requirements; and
- prohibiting dispensation of any drug authorized under the pharmacist's or pharmacy's license, except under certain conditions.

C.S.H.B. 2817 prohibits a pharmacist or pharmacy from charging a health benefit plan issuer or pharmacy benefit manager for the delivery of a prescription drug to a patient on request unless the charge is specifically agreed to by the issuer or manager. The bill prohibits a pharmacy benefit manager from retaliating against a pharmacist or pharmacy based on the pharmacist's or pharmacy's exercise of any right or remedy under applicable statutory provisions and sets out certain actions considered to be prohibited retaliation. The bill's provisions may not be waived, voided, or nullified by contract. The bill establishes the applicability of its provisions.

### **EFFECTIVE DATE**

September 1, 2019.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 2817 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute does not include provisions relating to the evaluation of a pharmacy using certain performance measures and relating to the imposition of fees by a health benefit plan issuer or a pharmacy benefit manager based on the outcome of those measures.

The substitute includes provisions that do the following:

- prohibit a health benefit plan issuer or pharmacy benefit manager from directly or indirectly reducing the amount of a claim payment to a pharmacist or pharmacy after a certain adjudication of the claim except in accordance with an audit;
- prohibit a pharmacy benefit manager from paying an affiliated pharmacist or pharmacy a reimbursement amount that is more than the amount paid to a nonaffiliated pharmacist or pharmacy for the same service;
- require a pharmacy benefit network contract to specify or reference a separate fee schedule;
- provide the required contents of such a fee schedule;
- prohibit a pharmacist or pharmacy from charging a health benefit plan issuer or pharmacy benefit manager for the delivery of a prescription drug to a patient on request unless the charge is specifically agreed to by the issuer or manager; and
- prohibit certain retaliation from a pharmacy benefit manager against a pharmacist or pharmacy.

The substitute changes the documents that a certain pharmacist or pharmacy is entitled to receive from receiving a copy of the entire contract to receiving from the pharmacy services administrative organization a copy of the contract provisions applicable to the pharmacist or

pharmacy.

The substitute revises the prohibited conditions of a contract between a health benefit plan issuer or pharmacy benefit manager and a pharmacist or pharmacy relating to the delivery of drugs and to professional standards and the scope of practice requirements.

The substitute does not include a provision making a violation of its provisions by a health benefit plan issuer or pharmacy benefit manager an unfair or deceptive act or practice.

The substitute revises provisions providing for the applicability of the bill's provisions.