

By: Lambert, Sheffield, Zerwas, Oliverson,
Lucio III, et al.

H.B. No. 2099

A BILL TO BE ENTITLED

AN ACT

relating to modification of certain prescription drug benefits and coverage offered by certain health benefit plans.

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

SECTION 1. Section 1369.0541, Insurance Code, is amended by amending Subsections (a) and (b) and adding Subsections (a-1) and (b-1) to read as follows:

(a) Except as provided by Section 1369.055(a-1) and Subsection (b-1) of this section, a [A] health benefit plan issuer may modify drug coverage provided under a health benefit plan if:

(1) the modification occurs at the time of coverage renewal;

(2) the modification is effective uniformly among all group health benefit plan sponsors covered by identical or substantially identical health benefit plans or all individuals covered by identical or substantially identical individual health benefit plans, as applicable; and

(3) not later than the 60th day before the date the modification is effective, the issuer provides written notice of the modification to the commissioner, each affected group health benefit plan sponsor, each affected enrollee in an affected group health benefit plan, and each affected individual health benefit plan holder.

(a-1) The notice described by Subsection (a)(3) must

1 include a statement:

2 (1) indicating that the health benefit plan issuer is
3 modifying drug coverage provided under the health benefit plan;

4 (2) explaining the type of modification; and

5 (3) indicating that, on renewal of the health benefit
6 plan, the health benefit plan issuer may not modify an enrollee's
7 contracted benefit level for any prescription drug that was
8 approved or covered under the plan in the immediately preceding
9 plan year as provided by Section 1369.055(a-1).

10 (b) Modifications affecting drug coverage that require
11 notice under Subsection (a) include:

12 (1) removing a drug from a formulary;

13 (2) adding a requirement that an enrollee receive
14 prior authorization for a drug;

15 (3) imposing or altering a quantity limit for a drug;

16 (4) imposing a step-therapy restriction for a drug;

17 [~~and~~]

18 (5) moving a drug to a higher cost-sharing tier;

19 (6) increasing a coinsurance, copayment, deductible,
20 or other out-of-pocket expense that an enrollee must pay for a drug;

21 and

22 (7) reducing the maximum drug coverage amount [~~unless~~
23 ~~a generic drug alternative to the drug is available~~].

24 (b-1) Modifications affecting drug coverage that are more
25 favorable to enrollees may be made at any time and do not require
26 notice under Subsection (a), including:

27 (1) the addition of a drug to a formulary;

1 (2) the reduction of a coinsurance, copayment,
2 deductible, or other out-of-pocket expense that an enrollee must
3 pay for a drug; and

4 (3) the removal of a utilization review requirement.

5 SECTION 2. Section 1369.055, Insurance Code, is amended by
6 adding Subsections (a-1), (a-2), and (c) to read as follows:

7 (a-1) On renewal of a health benefit plan, the plan issuer
8 may not modify an enrollee's contracted benefit level for any
9 prescription drug that was approved or covered under the plan in the
10 immediately preceding plan year and prescribed during that year for
11 a medical condition or mental illness of the enrollee if:

12 (1) the enrollee was covered by the health benefit
13 plan on the date immediately preceding the renewal date;

14 (2) a physician or other prescribing provider
15 prescribes the drug for the medical condition or mental illness;
16 and

17 (3) the physician or other prescribing provider in
18 consultation with the enrollee determines that the drug is the most
19 appropriate course of treatment.

20 (a-2) Modifications prohibited under Subsection (a-1)
21 include:

22 (1) removing a drug from a formulary;

23 (2) adding a requirement that an enrollee receive
24 prior authorization for a drug;

25 (3) imposing or altering a quantity limit for a drug;

26 (4) imposing a step-therapy restriction for a drug;

27 (5) moving a drug to a higher cost-sharing tier;

1 (6) increasing a coinsurance, copayment, deductible,
2 or other out-of-pocket expense that an enrollee must pay for a drug;
3 and

4 (7) reducing the maximum drug coverage amount.

5 (c) Subsections (a-1) and (a-2) do not:

6 (1) prohibit a health benefit plan issuer from
7 requiring, by contract, written policy or procedure, or other
8 agreement or course of conduct, a pharmacist to provide a
9 substitution for a prescription drug in accordance with Subchapter
10 A, Chapter 562, Occupations Code, under which the pharmacist may
11 substitute an interchangeable biologic product or therapeutically
12 equivalent generic product as determined by the United States Food
13 and Drug Administration;

14 (2) prohibit a physician or other prescribing provider
15 from prescribing another medication;

16 (3) prohibit the health benefit plan issuer from
17 adding a new drug to a formulary;

18 (4) require a health benefit plan to provide coverage
19 to an enrollee under circumstances not described by Subsection
20 (a-1); or

21 (5) prohibit a health benefit plan issuer from
22 removing a drug from its formulary or denying an enrollee coverage
23 for the drug if:

24 (A) the United States Food and Drug
25 Administration has issued a statement about the drug that calls
26 into question the clinical safety of the drug;

27 (B) the drug manufacturer has notified the United

1 States Food and Drug Administration of a manufacturing
2 discontinuance or potential discontinuance of the drug as required
3 by Section 506C, Federal Food, Drug, and Cosmetic Act (21 U.S.C.
4 Section 356c); or

5 (C) the drug manufacturer has removed the drug
6 from the market.

7 SECTION 3. The changes in law made by this Act apply only to
8 a health benefit plan that is delivered, issued for delivery, or
9 renewed on or after January 1, 2020. A health benefit plan
10 delivered, issued for delivery, or renewed before January 1, 2020,
11 is governed by the law as it existed immediately before the
12 effective date of this Act, and that law is continued in effect for
13 that purpose.

14 SECTION 4. This Act takes effect September 1, 2019.