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H.B. No. 2817

A BILL TO BE ENTITLED

AN ACT

relating to the contractual relationship between a pharmacist or pharmacy and a health benefit plan issuer or pharmacy benefit manager.

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

SECTION 1. Chapter 1369, Insurance Code, is amended by adding Subchapter K to read as follows:

SUBCHAPTER K. CONTRACTS WITH PHARMACISTS AND PHARMACIES

Sec. 1369.501. DEFINITIONS. In this subchapter:

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

(2) "Pharmacy services administrative organization" means an entity that contracts with a pharmacist or pharmacy to conduct on behalf of the pharmacist or pharmacy the pharmacist's or pharmacy's business with a third-party payor, including a pharmacy benefit manager, in connection with pharmacy benefits and to assist the pharmacist or pharmacy by providing administrative services, including negotiating, executing, and administering a contract with a third-party payor and communicating with the third-party payor in connection with a contract or pharmacy benefits.

Sec. 1369.502. APPLICABILITY OF SUBCHAPTER. (a) This subchapter 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 of coverage or similar coverage document that is offered by:

(1) an insurance company;

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

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

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

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

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

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

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

(9) an exchange operating under Chapter 942.

(b) Notwithstanding any other law, this subchapter applies to:

(1) a small employer health benefit plan subject to Chapter 1501, including coverage provided through a health group cooperative under Subchapter B of that chapter;

(2) a standard health benefit plan issued under Chapter 1507;

(3) health benefits provided by or through a church

benefits board under Subchapter I, Chapter 22, Business Organizations Code;

(4) group health coverage made available by a school district in accordance with Section 22.004, Education Code;

(5) a regional or local health care program operated under Section 75.104, Health and Safety Code; and

(6) a self-funded health benefit plan sponsored by a professional employer organization under Chapter 91, Labor Code.

(c) This subchapter does not apply to an issuer or provider of health benefits under or a pharmacy benefit manager administering pharmacy benefits under a workers' compensation insurance policy or other form of providing medical benefits under Title 5, Labor Code.

Sec. 1369.503. REDUCTION OF CERTAIN CLAIM PAYMENT AMOUNTS PROHIBITED. (a) A health benefit plan issuer or pharmacy benefit manager may not directly or indirectly reduce 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 performed under Subchapter F.

(b) Nothing in this section prohibits a health benefit plan issuer or pharmacy benefit manager from increasing a claim payment amount after adjudication of the claim.

Sec. 1369.504. REIMBURSEMENT OF AFFILIATED AND NONAFFILIATED PHARMACISTS AND PHARMACIES. (a) In this section:

(1) "Affiliated pharmacist or pharmacy" means a

1 pharmacist or pharmacy that directly, or indirectly through one or
2 more intermediaries, controls or is controlled by, or is under
3 common control with, a pharmacy benefit manager.

4 (2) "Nonaffiliated pharmacist or pharmacy" means a
5 pharmacist or pharmacy that does not directly, or indirectly
6 through one or more intermediaries, control and is not controlled
7 by or under common control with a pharmacy benefit manager.

8 (b) A pharmacy benefit manager may not pay an affiliated
9 pharmacist or pharmacy a reimbursement amount that is more than the
10 amount the pharmacy benefit manager pays a nonaffiliated pharmacist
11 or pharmacy for the same pharmacist service.

12 Sec. 1369.505. NETWORK CONTRACT FEE SCHEDULE. (a) In this
13 section, "pharmacy benefit network" means a network of pharmacies
14 that have contracted with a pharmacy benefit manager to provide
15 pharmacist services to enrollees.

16 (b) A pharmacy benefit network contract must specify or
17 reference a separate fee schedule. The fee schedule must be
18 provided electronically in an easily accessible and complete
19 spreadsheet format and, on request, in writing to each contracted
20 pharmacist and pharmacy. The fee schedule must describe:

21 (1) specific services or procedures that the
22 pharmacist or pharmacy may deliver and the amount of the
23 corresponding payment;

24 (2) a methodology for calculating the amount of the
25 payment based on a published fee schedule; or

26 (3) any other reasonable manner that provides an
27 ascertainable amount for payment for services.

1 Sec. 1369.506. DISCLOSURE OF PHARMACY SERVICES
2 ADMINISTRATIVE ORGANIZATION CONTRACT. A pharmacist or pharmacy
3 that is a member of a pharmacy services administrative organization
4 that enters into a contract with a health benefit plan issuer or
5 pharmacy benefit manager on the pharmacist's or pharmacy's behalf
6 is entitled to receive from the pharmacy services administrative
7 organization a copy of the contract provisions applicable to the
8 pharmacist or pharmacy, including each provision relating to the
9 pharmacist's or pharmacy's rights and obligations under the
10 contract.

11 Sec. 1369.507. DELIVERY OF DRUGS. (a) A health benefit
12 plan issuer or pharmacy benefit manager may not as a condition of a
13 contract with a pharmacist or pharmacy prohibit the pharmacist or
14 pharmacy from:

15 (1) mailing or delivering a drug to a patient on the
16 patient's request, to the extent permitted by law; or

17 (2) charging a shipping and handling fee to a patient
18 requesting a prescription be mailed or delivered if the pharmacist
19 or pharmacy discloses to the patient before the delivery:

20 (A) the fee that will be charged; and

21 (B) that the fee may not be reimbursable by the
22 health benefit plan issuer or pharmacy benefit manager.

23 (b) A pharmacist or pharmacy may not charge a health benefit
24 plan issuer or pharmacy benefit manager for the delivery of a
25 prescription drug as described by this section unless the charge is
26 specifically agreed to by the health benefit plan issuer or
27 pharmacy benefit manager.

1 Sec. 1369.508. PROFESSIONAL STANDARDS AND SCOPE OF PRACTICE
2 REQUIREMENTS. A health benefit plan issuer or pharmacy benefit
3 manager may not as a condition of a contract with a pharmacist or
4 pharmacy:

5 (1) require pharmacist or pharmacy accreditation
6 standards or recertification requirements inconsistent with, more
7 stringent than, or in addition to federal and state requirements;
8 or

9 (2) prohibit a licensed pharmacist or pharmacy from
10 dispensing any drug that may be dispensed under the pharmacist's or
11 pharmacy's license unless:

12 (A) applicable state or federal law prohibits the
13 pharmacist or pharmacy from dispensing the drug; or

14 (B) the manufacturer of the drug requires that a
15 pharmacist or pharmacy possess one or more accreditations or
16 certifications to dispense the drug and the pharmacist or pharmacy
17 does not meet the requirement.

18 Sec. 1369.509. RETALIATION PROHIBITED. A pharmacy benefit
19 manager may not retaliate against a pharmacist or pharmacy based on
20 the pharmacist's or pharmacy's exercise of any right or remedy under
21 this chapter. Retaliation prohibited by this section includes:

22 (1) terminating or refusing to renew a contract with
23 the pharmacist or pharmacy;

24 (2) subjecting the pharmacist or pharmacy to increased
25 audits; or

26 (3) failing to promptly pay the pharmacist or pharmacy
27 any money owed by the pharmacy benefit manager to the pharmacist or

1 pharmacy.

2 Sec. 1369.510. WAIVER PROHIBITED. The provisions of this
3 subchapter may not be waived, voided, or nullified by contract.

4 SECTION 2. The change in law made by this Act applies only
5 to a contract entered into or renewed on or after the effective date
6 of this Act. A contract entered into or renewed before the
7 effective date of this Act is governed by the law as it existed
8 immediately before the effective date of this Act, and that law is
9 continued in effect for that purpose.

10 SECTION 3. This Act takes effect September 1, 2019.