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H.B. No. 3388

Substitute the following for H.B. No. 3388:

By: Sheffield

C.S.H.B. No. 3388

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the reimbursement of prescription drugs under Medicaid
3 and the child health plan program.

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

5 SECTION 1. Section 533.005(a), Government Code, is amended
6 to read as follows:

7 (a) A contract between a managed care organization and the
8 commission for the organization to provide health care services to
9 recipients must contain:

10 (1) procedures to ensure accountability to the state
11 for the provision of health care services, including procedures for
12 financial reporting, quality assurance, utilization review, and
13 assurance of contract and subcontract compliance;

14 (2) capitation rates that ensure the cost-effective
15 provision of quality health care;

16 (3) a requirement that the managed care organization
17 provide ready access to a person who assists recipients in
18 resolving issues relating to enrollment, plan administration,
19 education and training, access to services, and grievance
20 procedures;

21 (4) a requirement that the managed care organization
22 provide ready access to a person who assists providers in resolving
23 issues relating to payment, plan administration, education and
24 training, and grievance procedures;

1 (5) a requirement that the managed care organization
2 provide information and referral about the availability of
3 educational, social, and other community services that could
4 benefit a recipient;

5 (6) procedures for recipient outreach and education;

6 (7) a requirement that the managed care organization
7 make payment to a physician or provider for health care services
8 rendered to a recipient under a managed care plan on any claim for
9 payment that is received with documentation reasonably necessary
10 for the managed care organization to process the claim:

11 (A) not later than:

12 (i) the 10th day after the date the claim is
13 received if the claim relates to services provided by a nursing
14 facility, intermediate care facility, or group home;

15 (ii) the 30th day after the date the claim
16 is received if the claim relates to the provision of long-term
17 services and supports not subject to Subparagraph (i); and

18 (iii) the 45th day after the date the claim
19 is received if the claim is not subject to Subparagraph (i) or (ii);
20 or

21 (B) within a period, not to exceed 60 days,
22 specified by a written agreement between the physician or provider
23 and the managed care organization;

24 (7-a) a requirement that the managed care organization
25 demonstrate to the commission that the organization pays claims
26 described by Subdivision (7)(A)(ii) on average not later than the
27 21st day after the date the claim is received by the organization;

1 (8) a requirement that the commission, on the date of a
2 recipient's enrollment in a managed care plan issued by the managed
3 care organization, inform the organization of the recipient's
4 Medicaid certification date;

5 (9) a requirement that the managed care organization
6 comply with Section 533.006 as a condition of contract retention
7 and renewal;

8 (10) a requirement that the managed care organization
9 provide the information required by Section 533.012 and otherwise
10 comply and cooperate with the commission's office of inspector
11 general and the office of the attorney general;

12 (11) a requirement that the managed care
13 organization's usages of out-of-network providers or groups of
14 out-of-network providers may not exceed limits for those usages
15 relating to total inpatient admissions, total outpatient services,
16 and emergency room admissions determined by the commission;

17 (12) if the commission finds that a managed care
18 organization has violated Subdivision (11), a requirement that the
19 managed care organization reimburse an out-of-network provider for
20 health care services at a rate that is equal to the allowable rate
21 for those services, as determined under Sections 32.028 and
22 32.0281, Human Resources Code;

23 (13) a requirement that, notwithstanding any other
24 law, including Sections 843.312 and 1301.052, Insurance Code, the
25 organization:

26 (A) use advanced practice registered nurses and
27 physician assistants in addition to physicians as primary care

1 providers to increase the availability of primary care providers in
2 the organization's provider network; and

3 (B) treat advanced practice registered nurses
4 and physician assistants in the same manner as primary care
5 physicians with regard to:

6 (i) selection and assignment as primary
7 care providers;

8 (ii) inclusion as primary care providers in
9 the organization's provider network; and

10 (iii) inclusion as primary care providers
11 in any provider network directory maintained by the organization;

12 (14) a requirement that the managed care organization
13 reimburse a federally qualified health center or rural health
14 clinic for health care services provided to a recipient outside of
15 regular business hours, including on a weekend day or holiday, at a
16 rate that is equal to the allowable rate for those services as
17 determined under Section [32.028](#), Human Resources Code, if the
18 recipient does not have a referral from the recipient's primary
19 care physician;

20 (15) a requirement that the managed care organization
21 develop, implement, and maintain a system for tracking and
22 resolving all provider appeals related to claims payment, including
23 a process that will require:

24 (A) a tracking mechanism to document the status
25 and final disposition of each provider's claims payment appeal;

26 (B) the contracting with physicians who are not
27 network providers and who are of the same or related specialty as

1 the appealing physician to resolve claims disputes related to
2 denial on the basis of medical necessity that remain unresolved
3 subsequent to a provider appeal;

4 (C) the determination of the physician resolving
5 the dispute to be binding on the managed care organization and
6 provider; and

7 (D) the managed care organization to allow a
8 provider with a claim that has not been paid before the time
9 prescribed by Subdivision (7)(A)(ii) to initiate an appeal of that
10 claim;

11 (16) a requirement that a medical director who is
12 authorized to make medical necessity determinations is available to
13 the region where the managed care organization provides health care
14 services;

15 (17) a requirement that the managed care organization
16 ensure that a medical director and patient care coordinators and
17 provider and recipient support services personnel are located in
18 the South Texas service region, if the managed care organization
19 provides a managed care plan in that region;

20 (18) a requirement that the managed care organization
21 provide special programs and materials for recipients with limited
22 English proficiency or low literacy skills;

23 (19) a requirement that the managed care organization
24 develop and establish a process for responding to provider appeals
25 in the region where the organization provides health care services;

26 (20) a requirement that the managed care organization:

27 (A) develop and submit to the commission, before

1 the organization begins to provide health care services to
2 recipients, a comprehensive plan that describes how the
3 organization's provider network complies with the provider access
4 standards established under Section 533.0061;

5 (B) as a condition of contract retention and
6 renewal:

7 (i) continue to comply with the provider
8 access standards established under Section 533.0061; and

9 (ii) make substantial efforts, as
10 determined by the commission, to mitigate or remedy any
11 noncompliance with the provider access standards established under
12 Section 533.0061;

13 (C) pay liquidated damages for each failure, as
14 determined by the commission, to comply with the provider access
15 standards established under Section 533.0061 in amounts that are
16 reasonably related to the noncompliance; and

17 (D) regularly, as determined by the commission,
18 submit to the commission and make available to the public a report
19 containing data on the sufficiency of the organization's provider
20 network with regard to providing the care and services described
21 under Section 533.0061(a) and specific data with respect to access
22 to primary care, specialty care, long-term services and supports,
23 nursing services, and therapy services on the average length of
24 time between:

25 (i) the date a provider requests prior
26 authorization for the care or service and the date the organization
27 approves or denies the request; and

1 (ii) the date the organization approves a
2 request for prior authorization for the care or service and the date
3 the care or service is initiated;

4 (21) a requirement that the managed care organization
5 demonstrate to the commission, before the organization begins to
6 provide health care services to recipients, that, subject to the
7 provider access standards established under Section 533.0061:

8 (A) the organization's provider network has the
9 capacity to serve the number of recipients expected to enroll in a
10 managed care plan offered by the organization;

11 (B) the organization's provider network
12 includes:

13 (i) a sufficient number of primary care
14 providers;

15 (ii) a sufficient variety of provider
16 types;

17 (iii) a sufficient number of providers of
18 long-term services and supports and specialty pediatric care
19 providers of home and community-based services; and

20 (iv) providers located throughout the
21 region where the organization will provide health care services;
22 and

23 (C) health care services will be accessible to
24 recipients through the organization's provider network to a
25 comparable extent that health care services would be available to
26 recipients under a fee-for-service or primary care case management
27 model of Medicaid managed care;

1 (22) a requirement that the managed care organization
2 develop a monitoring program for measuring the quality of the
3 health care services provided by the organization's provider
4 network that:

5 (A) incorporates the National Committee for
6 Quality Assurance's Healthcare Effectiveness Data and Information
7 Set (HEDIS) measures;

8 (B) focuses on measuring outcomes; and

9 (C) includes the collection and analysis of
10 clinical data relating to prenatal care, preventive care, mental
11 health care, and the treatment of acute and chronic health
12 conditions and substance abuse;

13 (23) subject to Subsection (a-1), a requirement that
14 the managed care organization develop, implement, and maintain an
15 outpatient pharmacy benefit plan for its enrolled recipients:

16 (A) that exclusively employs the vendor drug
17 program formulary and preserves the state's ability to reduce
18 waste, fraud, and abuse under Medicaid;

19 (B) that adheres to the applicable preferred drug
20 list adopted by the commission under Section [531.072](#);

21 (C) that includes the prior authorization
22 procedures and requirements prescribed by or implemented under
23 Sections [531.073](#)(b), (c), and (g) for the vendor drug program;

24 (D) for purposes of which the managed care
25 organization:

26 (i) may not negotiate or collect rebates
27 associated with pharmacy products on the vendor drug program

1 formulary; and

2 (ii) may not receive drug rebate or pricing
3 information that is confidential under Section 531.071;

4 (E) that complies with the prohibition under
5 Section 531.089;

6 (F) under which the managed care organization may
7 not prohibit, limit, or interfere with a recipient's selection of a
8 pharmacy or pharmacist of the recipient's choice for the provision
9 of pharmaceutical services under the plan through the imposition of
10 different copayments;

11 (G) that allows the managed care organization or
12 any subcontracted pharmacy benefit manager to contract with a
13 pharmacist or pharmacy providers separately for specialty pharmacy
14 services, except that:

15 (i) the managed care organization and
16 pharmacy benefit manager are prohibited from allowing exclusive
17 contracts with a specialty pharmacy owned wholly or partly by the
18 pharmacy benefit manager responsible for the administration of the
19 pharmacy benefit program; and

20 (ii) the managed care organization and
21 pharmacy benefit manager must adopt policies and procedures for
22 reclassifying prescription drugs from retail to specialty drugs,
23 and those policies and procedures must be consistent with rules
24 adopted by the executive commissioner and include notice to network
25 pharmacy providers from the managed care organization;

26 (H) under which the managed care organization may
27 not prevent a pharmacy or pharmacist from participating as a

1 provider if the pharmacy or pharmacist agrees to comply with the
2 financial terms and conditions of the contract as well as other
3 reasonable administrative and professional terms and conditions of
4 the contract;

5 (I) under which the managed care organization may
6 include mail-order pharmacies in its networks, but may not require
7 enrolled recipients to use those pharmacies, and may not charge an
8 enrolled recipient who opts to use this service a fee, including
9 postage and handling fees;

10 (J) under which the managed care organization or
11 pharmacy benefit manager, as applicable, must pay claims in
12 accordance with Section 843.339, Insurance Code; and

13 (K) under which the managed care organization or
14 pharmacy benefit manager, as applicable:

15 (i) must comply with Section 533.00514 as a
16 condition of contract retention and renewal [~~to place a drug on a~~
17 ~~maximum allowable cost list, must ensure that:~~

18 [~~(a) the drug is listed as "A" or "B"~~
19 ~~rated in the most recent version of the United States Food and Drug~~
20 ~~Administration's Approved Drug Products with Therapeutic~~
21 ~~Equivalence Evaluations, also known as the Orange Book, has an "NR"~~
22 ~~or "NA" rating or a similar rating by a nationally recognized~~
23 ~~reference, and~~

24 [~~(b) the drug is generally available~~
25 ~~for purchase by pharmacies in the state from national or regional~~
26 ~~wholesalers and is not obsolete];~~

27 (ii) must [~~provide to a network pharmacy~~

1 ~~provider, at the time a contract is entered into or renewed with the~~
2 ~~network pharmacy provider, the sources used to determine the~~
3 ~~maximum allowable cost pricing for the maximum allowable cost list~~
4 ~~specific to that provider;~~

5 ~~[(iii) must]~~ review and update drug
6 reimbursement ~~[maximum allowable cost]~~ price information at least
7 once every seven days to reflect any modification of ~~[maximum~~
8 ~~allowable cost]~~ pricing under the vendor drug program;

9 (iii) ~~[(iv) must, in formulating the~~
10 ~~maximum allowable cost price for a drug, use only the price of the~~
11 ~~drug and drugs listed as therapeutically equivalent in the most~~
12 ~~recent version of the United States Food and Drug Administration's~~
13 ~~Approved Drug Products with Therapeutic Equivalence Evaluations,~~
14 ~~also known as the Orange Book;~~

15 ~~[(v) must establish a process for~~
16 ~~eliminating products from the maximum allowable cost list or~~
17 ~~modifying maximum allowable cost prices in a timely manner to~~
18 ~~remain consistent with pricing changes and product availability in~~
19 ~~the marketplace;~~

20 ~~[(vi)]~~ must:

21 (a) provide a procedure under which a
22 network pharmacy provider may challenge the reimbursement ~~[a listed~~
23 ~~maximum allowable cost]~~ price for a drug;

24 (b) respond to a challenge not later
25 than the 15th day after the date the challenge is made;

26 (c) if the challenge is successful,
27 make an adjustment in the drug price effective on the date the

1 challenge is resolved, and make the adjustment applicable to all
2 similarly situated network pharmacy providers, as determined by the
3 managed care organization or pharmacy benefit manager, as
4 appropriate;

5 (d) if the challenge is denied,
6 provide the reason for the denial; and

7 (e) report to the commission every 90
8 days the total number of challenges that were made and denied in the
9 preceding 90-day period for each [~~maximum allowable cost list~~] drug
10 for which a challenge was denied during the period; and

11 (iv) [~~(vii) must notify the commission not~~
12 ~~later than the 21st day after implementing a practice of using a~~
13 ~~maximum allowable cost list for drugs dispensed at retail but not by~~
14 ~~mail; and~~

15 [(~~viii~~)] must provide a process for each of
16 its network pharmacy providers to readily access the drug
17 reimbursement price [~~maximum allowable cost~~] list specific to that
18 provider;

19 (24) a requirement that the managed care organization
20 and any entity with which the managed care organization contracts
21 for the performance of services under a managed care plan disclose,
22 at no cost, to the commission and, on request, the office of the
23 attorney general all discounts, incentives, rebates, fees, free
24 goods, bundling arrangements, and other agreements affecting the
25 net cost of goods or services provided under the plan;

26 (25) a requirement that the managed care organization
27 not implement significant, nonnegotiated, across-the-board

1 provider reimbursement rate reductions unless:

2 (A) subject to Subsection (a-3), the
3 organization has the prior approval of the commission to make the
4 reductions [~~reduction~~]; or

5 (B) the rate reductions are based on changes to
6 the Medicaid fee schedule or cost containment initiatives
7 implemented by the commission; and

8 (26) a requirement that the managed care organization
9 make initial and subsequent primary care provider assignments and
10 changes.

11 SECTION 2. Subchapter A, Chapter 533, Government Code, is
12 amended by adding Section 533.00514 to read as follows:

13 Sec. 533.00514. REIMBURSEMENT METHODOLOGY FOR PRESCRIPTION
14 DRUGS. (a) In accordance with rules adopted by the executive
15 commissioner, a managed care organization that contracts with the
16 commission under this chapter or a pharmacy benefit manager
17 administering a pharmacy benefit program on behalf of the managed
18 care organization shall reimburse a pharmacy or pharmacist,
19 including a Texas retail pharmacy or a Texas specialty pharmacy,
20 that:

21 (1) dispenses a prescribed prescription drug, other
22 than a drug obtained under Section 340B, Public Health Service Act
23 (42 U.S.C. Section 256b), to a recipient for not less than the
24 lesser of:

25 (A) the reimbursement amount for the drug under
26 the vendor drug program, including a dispensing fee that is not less
27 than the dispensing fee for the drug under the vendor drug program;

1 or

2 (B) the amount claimed by the pharmacy or
3 pharmacist, including the gross amount due or the usual and
4 customary charge to the public for the drug; or

5 (2) dispenses a prescribed prescription drug obtained
6 at a discounted price under Section 340B, Public Health Service Act
7 (42 U.S.C. Section 256b) to a recipient for not less than the
8 reimbursement amount for the drug under the vendor drug program,
9 including a dispensing fee that is not less than the dispensing fee
10 for the drug under the vendor drug program.

11 (b) The methodology adopted by rule by the executive
12 commissioner to determine Texas pharmacies' actual acquisition
13 cost (AAC) for purposes of the vendor drug program must be
14 consistent with the actual prices Texas pharmacies pay to acquire
15 prescription drugs marketed or sold by a specific manufacturer and
16 must be based on the National Average Drug Acquisition Cost
17 published by the Centers for Medicare and Medicaid Services or
18 another publication approved by the executive commissioner.

19 (c) The executive commissioner shall develop a process for
20 the periodic study of Texas retail pharmacies' actual acquisition
21 cost (AAC) for prescription drugs, Texas specialty pharmacies'
22 actual acquisition cost (AAC) for prescription drugs, retail
23 professional dispensing costs, and specialty pharmacy professional
24 dispensing costs and publish the results of each study on the
25 commission's Internet website.

26 (d) The dispensing fees adopted by the executive
27 commissioner for purposes of:

1 (1) Subsection (a)(1) must be based on, as
2 appropriate:

3 (A) Texas retail pharmacies' professional
4 dispensing costs for retail prescription drugs; or

5 (B) Texas specialty pharmacies' professional
6 dispensing costs for specialty prescription drugs; or

7 (2) Subsection (a)(2) must be based on Texas
8 pharmacies' professional dispensing costs for those drugs.

9 (e) Not less frequently than once every two years, the
10 commission shall conduct a study of Texas pharmacies' dispensing
11 costs for retail prescription drugs, specialty prescription drugs,
12 and drugs obtained under Section 340B, Public Health Service Act
13 (42 U.S.C. Section 256b). Based on the results of the study, the
14 executive commissioner shall adjust the minimum amount of the
15 retail professional dispensing fee and specialty pharmacy
16 professional dispensing fee under Subsection (a)(1) and the
17 dispensing fee for drugs obtained under Section 340B, Public Health
18 Service Act (42 U.S.C. Section 256b).

19 SECTION 3. Subchapter D, Chapter 62, Health and Safety
20 Code, is amended by adding Section 62.160 to read as follows:

21 Sec. 62.160. REIMBURSEMENT METHODOLOGY FOR PRESCRIPTION
22 DRUGS. A managed care organization providing pharmacy benefits
23 under the child health plan program or a pharmacy benefit manager
24 administering a pharmacy benefit program on behalf of the managed
25 care organization shall comply with Section 533.00514, Government
26 Code.

27 SECTION 4. Section 533.005(a-2), Government Code, is

1 repealed.

2 SECTION 5. If before implementing any provision of this Act
3 a state agency determines that a waiver or authorization from a
4 federal agency is necessary for implementation of that provision,
5 the agency affected by the provision shall request the waiver or
6 authorization and may delay implementing that provision until the
7 waiver or authorization is granted.

8 SECTION 6. This Act takes effect March 1, 2020.