

By: Sheffield

H.B. No. 3388

A BILL TO BE ENTITLED

AN ACT

relating to delivery of outpatient prescription drug benefits under certain public benefit programs, including Medicaid and the child health plan program.

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

ARTICLE 1. DELIVERY OF OUTPATIENT PRESCRIPTION DRUG BENEFITS USING FEE-FOR-SERVICE DELIVERY MODEL UNDER CERTAIN PUBLIC BENEFIT PROGRAMS

SECTION 1.01. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.068 to read as follows:

Sec. 531.068. DELIVERY OF OUTPATIENT PRESCRIPTION DRUG BENEFITS UNDER CERTAIN PROGRAMS. (a) In this section, "recipient" means a person receiving benefits under a program described by Subsection (b).

(b) Notwithstanding any other law, beginning January 1, 2020, the commission shall provide outpatient prescription drug benefits through the vendor drug program using a transparent fee-for-service delivery model to persons, including persons enrolled in a managed care program, receiving benefits under:

- (1) Medicaid;
- (2) the child health plan program;
- (3) the kidney health care program; and
- (4) any other benefits program administered by the commission that provides an outpatient prescription drug benefit.

1       (c) In providing outpatient prescription drug benefits  
2 under this section, the commission shall:

3           (1) eliminate any obligation to pay fees included in  
4 the capitation rate or other amounts paid to managed care  
5 organizations that are associated with the provision of outpatient  
6 prescription drug benefits, including:

7                   (A) the guaranteed risk margin; and

8                   (B) the health insurance providers fee imposed  
9 under Section 9010 of the federal Patient Protection and Affordable  
10 Care Act (Pub. L. No. 111-148), as amended by the Health Care and  
11 Education Reconciliation Act of 2010 (Pub. L. No. 111-152), and the  
12 associated effects of that fee on federal income taxes;

13           (2) pay claims in accordance with the deadlines  
14 imposed by Section 843.339, Insurance Code;

15           (3) if the commission contracts with a claims  
16 processor for purposes of this section, pay the processor only for  
17 reimbursement of any prescribed drug and a contracted  
18 administrative fee; and

19           (4) in accordance with the findings of the study  
20 conducted by the commission in response to Section 60 following the  
21 Article II appropriations to the commission in Chapter 605  
22 (S.B. 1), Acts of the 85th Legislature, Regular Session, 2017 (the  
23 General Appropriations Act):

24                   (A) consistently apply clinical prior  
25 authorization requirements statewide and use prior authorizations  
26 to control unnecessary utilization;

27                   (B) ensure the preferred drug list is not

1 disadvantaged;

2 (C) maintain drug utilization review; and

3 (D) coordinate data exchange under existing data  
4 warehouse and enterprise data resources.

5 (d) In providing outpatient prescription drug benefits  
6 under this section, the commission may not:

7 (1) prohibit, limit, or interfere with a recipient's  
8 selection of a pharmacy or pharmacist of the recipient's choice for  
9 the provision of pharmaceutical services by imposing different  
10 copayments associated with a pharmacy or pharmacist; and

11 (2) prevent a pharmacy or pharmacist from  
12 participating as a provider if the pharmacy or pharmacist agrees to  
13 comply with the financial terms of the program and any contract  
14 required under the program.

15 (e) In providing outpatient prescription drug benefits  
16 under this section, the commission may include mail-order  
17 pharmacies in the commission's network of pharmacy providers,  
18 except the commission may not:

19 (1) require recipients to use a mail-order pharmacy;  
20 or

21 (2) charge a recipient who elects to use a mail-order  
22 pharmacy a fee for using the mail order service, including a postage  
23 or handling fee.

24 (f) Notwithstanding any other law, a managed care  
25 organization providing health care services under a benefit program  
26 described by Subsection (b) may not develop, implement, or  
27 maintain an outpatient pharmacy benefit plan for recipients

1 beginning on the 180th day after the date the commission begins  
2 providing outpatient prescription drug benefits under this  
3 section.

4 SECTION 1.02. As soon as practicable after the effective  
5 date of this article, but not later than December 31, 2019, the  
6 Health and Human Services Commission shall amend each contract with  
7 a managed care organization entered into before the effective date  
8 of this article to prohibit the organization from providing  
9 outpatient prescription drug benefits to recipients under a public  
10 benefits program subject to Section 531.068, Government Code, as  
11 added by this Act, beginning on the 180th day after the date the  
12 commission begins providing outpatient prescription drug benefits  
13 in the manner required by that section.

14 ARTICLE 2. CESSATION OF DELIVERY OF OUTPATIENT PRESCRIPTION DRUG  
15 BENEFITS BY MANAGED CARE ORGANIZATIONS

16 SECTION 2.01. Section [533.012\(a\)](#), Government Code, is  
17 amended to read as follows:

18 (a) Each managed care organization contracting with the  
19 commission under this chapter shall submit the following, at no  
20 cost, to the commission and, on request, the office of the attorney  
21 general:

22 (1) a description of any financial or other business  
23 relationship between the organization and any subcontractor  
24 providing health care services under the contract;

25 (2) a copy of each type of contract between the  
26 organization and a subcontractor relating to the delivery of or  
27 payment for health care services;

1           (3) a description of the fraud control program used by  
2 any subcontractor that delivers health care services; and

3           (4) a description and breakdown of all funds paid to or  
4 by the managed care organization, including a health maintenance  
5 organization, primary care case management provider, [~~pharmacy~~  
6 ~~benefit manager,~~] and exclusive provider organization, necessary  
7 for the commission to determine the actual cost of administering  
8 the managed care plan.

9           SECTION 2.02. Section 32.046(a), Human Resources Code, is  
10 amended to read as follows:

11           (a) The executive commissioner shall adopt rules governing  
12 sanctions and penalties that apply to a provider [~~who participates~~  
13 in the vendor drug program [~~or is enrolled as a network pharmacy~~  
14 ~~provider of a managed care organization contracting with the~~  
15 ~~commission under Chapter 533, Government Code, or its subcontractor~~  
16 ~~and]~~ who submits an improper claim for reimbursement under the  
17 program.

18           SECTION 2.03. The following provisions are repealed:

19           (1) Sections 531.0697, 533.003(b), and 533.056,  
20 Government Code; and

21           (2) Section 32.073(c), Human Resources Code.

22           SECTION 2.04. The changes in law made by this article apply  
23 beginning on the 180th day after the date the Health and Human  
24 Services Commission begins providing outpatient prescription drug  
25 benefits in the manner required by Section 531.068, Government  
26 Code, as added by this Act. Until the changes in law made by this  
27 article apply, the law as it existed on the day immediately before

1 the effective date of this article governs, and the former law is  
2 continued in effect for that purpose.

3 ARTICLE 3. FEDERAL AUTHORIZATION AND EFFECTIVE DATE

4 SECTION 3.01. If before implementing any provision of this  
5 Act a state agency determines that a waiver or authorization from a  
6 federal agency is necessary for implementation of that provision,  
7 the agency affected by the provision shall request the waiver or  
8 authorization and may delay implementing that provision until the  
9 waiver or authorization is granted.

10 SECTION 3.02. This Act takes effect September 1, 2019.