BILL ANALYSIS

Senate Research Center

H.B. 1919
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Health & Human Services
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Consolidation in the pharmacy benefits and health insurance industries has concentrated control of pharmacy benefits in the hands of a few huge conglomerates. These benefit managers collectively manage roughly three-quarters of the pharmacy benefits market and their control continues to increase due to recent mergers with insurers. A recent survey suggests a significant number of pharmacies reported their patients having prescriptions transferred to a benefit manager, with the steering of patients to certain retail and specialty pharmacies increasing as these new conglomerates use both their pharmacy benefit manager and health insurance arms to "refer" patients to their own mail-order, retail, and specialty pharmacies. There are concerns that these "referral" practices represent a conflict of interest and decrease both transparency and competition in the health services market. H.B. 1919 seeks to remedy this situation by protecting the right of pharmacy patients to use their pharmacy of choice.

H.B. 1919 amends current law relating to certain prohibited practices for certain health benefit plan issuers and certain required and prohibited practices for pharmacy benefit managers, including pharmacy benefit managers participating in the Medicaid and child health plan programs.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 1369, Insurance Code, by adding Subchapter L, as follows:

SUBCHAPTER L. AFFILIATED PROVIDERS

Sec. 1369.551. DEFINITIONS. Defines “affiliated provider,” “health benefit plan,” and “pharmacy benefit manager.”

Sec. 1369.552. TRANSFER OR ACCEPTANCE OF CERTAIN RECORDS PROHIBITED. (a) Provides that, in this section, “commercial purpose” does not include pharmacy reimbursement, formulary compliance, pharmaceutical care, utilization review by a health care provider, or a public health activity authorized by law.

(b) Prohibits a health benefit plan (HBP) issuer or a pharmacy benefit manager (PBM) from transferring to or receiving from an affiliated provider a record containing patient- or prescriber-identifiable prescription information for a commercial purpose.

Sec. 1369.553. PROHIBITION ON CERTAIN COMMUNICATIONS. (a) Prohibits an HBP issuer or PBM from steering or directing a patient to use the issuer’s or manager’s affiliated provider through any oral or written communication, including:

(1) online messaging regarding the provider; or

(2) patient- or prospective patient-specific advertising, marketing, or promotion of the pharmacy.

(b) Provides that this section does not prohibit an HBP issuer or PBM from including the issuer's or manager's affiliated provider in a patient or prospective patient communication, if the communication:

(1) is regarding information about the cost or service provided by pharmacies or durable medical equipment providers in the network of an HBP in which a patient is enrolled; and

(2) includes accurate comparable information regarding pharmacies or durable medical equipment providers in the network that are not the issuer's or manager's affiliated providers.

Sec. 1369.554. PROHIBITION ON CERTAIN REFERRALS AND SOLICITATIONS. (a) Prohibits an HBP issuer or PBM from requiring a patient to use the issuer's or manager's affiliated provider in order for the patient to receive the maximum benefit for the service under the patient's HBP.

(b) Prohibits an HBP issuer or PBM from offering or implementing an HBP that requires or induces a patient to use the issuer's or manager's affiliated provider, including by providing for reduced cost-sharing if the patient uses the affiliated provider.

(c) Prohibits an HBP issuer or PBM from soliciting a patient or prescriber to transfer a patient prescription to the issuer's or manager's affiliated provider.

(d) Prohibits an HBP issuer or PBM from requiring a pharmacy or durable medical equipment provider that is not the issuer's or manager's affiliated provider to transfer a patient's prescription to the issuer's or manager's affiliated provider without the prior written consent of the patient.

SECTION 2. Amends Subchapter B, Chapter 531, Government Code, by adding Section 531.0695, as follows:

Sec. 531.0695. REQUIRED FEE SCHEDULE FOR CERTAIN PHARMACY BENEFITS PROVIDED UNDER MEDICAID OR CHILD HEALTH PLAN PROGRAM. (a) Defines "pharmacy benefit manager" for this section.

(b) Requires that a contract between a PBM and a managed care organization that contracts with the Health and Human Services Commission to provide pharmacy benefits under Medicaid or the child health plan program contain a requirement that the PBM have a fee schedule that applies to each pharmacy or pharmacist with which the PBM contracts. Requires that the contract between the PBM and the pharmacy or pharmacist refer to the fee schedule and requires the PBM to provide the fee schedule:

(1) in the contract; or

(2) separately in an easy-to-access, electronic spreadsheet format and, on request by the pharmacy or pharmacist, in writing.

(c) Requires that a fee schedule provided under Subsection (b) describe:

(1) specific pharmacy benefits that the pharmacy or pharmacist is authorized to deliver and the amount of the corresponding reimbursement for those benefits;

(2) the methodology used to calculate the reimbursement for specific pharmacy benefits; or

(3) another reasonable method that a pharmacy or pharmacist is authorized to use to ascertain the corresponding reimbursement amount for a specific pharmacy benefit.

SECTION 3. Provides that Sections 1369.554(a) and (b), Insurance Code, as added by this Act, apply only to an HBP delivered, issued for delivery, or renewed on or after the effective date of this Act.

SECTION 4. Makes application of Section 531.0695, Government Code, prospective.

SECTION 5. Requires a state agency, if necessary for implementation of a provision of this Act, to request a waiver or authorization from a federal agency, and authorizes delay of implementation until such a waiver or authorization is granted.

SECTION 6. Effective date: September 1, 2021.