BILL ANALYSIS

C.S.H.B. 1919
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Insurance
Committee Report (Substituted)

BACKGROUND AND PURPOSE

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. C.S.H.B. 1919 seeks to remedy this situation by protecting the right of pharmacy patients to use their pharmacy of choice.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1919 prohibits a health benefit plan issuer or provider benefit manager from transferring to or receiving from the issuer's or manager's affiliated provider a record containing patient- or prescriber-identifiable prescription information for a commercial purpose, which under the bill is exclusive of pharmacy reimbursement, formulary compliance, pharmaceutical care, utilization review by a health care provider, or a public health activity otherwise authorized by law. The bill defines "affiliated provider" as a pharmacy or durable medical equipment provider that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with a health benefit plan issuer or pharmacy benefit manager. The bill defines "health benefit plan" and "pharmacy benefit manager" by reference.

C.S.H.B. 1919 prohibits a health benefit plan issuer or pharmacy benefit manager from steering or directing a patient to use the issuer's or manager's affiliated provider through any oral or written communication, including online messaging or certain advertising, marketing, or promotion of the provider. This prohibition does not prohibit a health benefit plan issuer or pharmacy benefit manager from including the issuer's or manager's affiliated provider in a patient or prospective patient communication that meets the following criteria:

- the communication is regarding information about the cost or service provided by pharmacies or durable medical equipment providers in the network of a health benefit plan in which the patient or prospective patient is enrolled; and
- the communication 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.

C.S.H.B. 1919 prohibits a health benefit plan issuer or pharmacy benefit manager from doing the following:

- 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 health benefit plan;
- offering or implementing a health benefit plan that requires or induces a patient to use the insurer's or manager's affiliated provider, including by providing for reduced cost-sharing if the patient uses the affiliated provider;
- soliciting a patient or prescriber to transfer a patient prescription to the issuer's or manager's affiliated provider; or
- 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.

EFFECTIVE DATE

September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1919 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute replaces the definition for "affiliated pharmacy" with a definition for "affiliated provider" and revises the bill to reflect that change. The substitute includes a definition for "health benefit plan." The substitute makes the following changes with regard to terminology used in the bill:

- replaces a reference to "pharmacy benefit manager" with "health benefit plan issuer or provider benefit manager"; and
- replaces certain references to "an affiliated pharmacy" with "the issuer's or manager's affiliated provider."

The substitute includes a prohibition against a health benefit plan issuer or pharmacy benefit manager from requiring a 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

The substitute includes a procedural provision applying the bill's provisions only to a health benefit plan delivered, issued for delivery, or renewed on or after the bill's effective date.