

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 2195
By: Kolkhorst
Health & Human Services
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Background

Pharmacy benefit managers (PBM) serve as middlemen between health plans, patients, and pharmacies, determining not only which prescription drugs are covered but also at which pharmacies patients can fill their prescriptions. An uneven playing field shortchanges pharmacists and creates barriers, limiting access for patients to receive needed medications from their local pharmacy. PBM practices are rife with self-dealing and threaten pharmacies' continued viability. S.B. 2195 protects patients who receive prescription drug benefits through a commercial health plan subject to Texas Department of Insurance (TDI) oversight, similar to others in the supply chain. The bill ensures patient choice, prevents self-dealing, and prohibits unfair clawbacks.

Key Provisions

- Prohibits a PBM from:
 - reducing the amount of a claim payment to a pharmacist or pharmacy after adjudication of the claim;
 - requiring pharmacist or pharmacy accreditation standards or recertification requirements inconsistent with, more stringent than, or in addition to federal and state requirements;
 - prohibiting a licensed pharmacist or pharmacy from dispensing any drug that may be dispensed under the pharmacist's or pharmacy's license;
 - requiring an enrollee to use a mail order pharmacy; and
 - prohibiting the pharmacist or pharmacy from mailing or delivering a drug to a patient on the patient's request or charging a shipping and handling fee to a patient requesting a prescription be mailed or delivered.

Changes in the committee substitute

- Eliminates SECTION 1 of introduced version that requires the fee schedule for certain pharmacy benefits provided under Medicaid or child health plan programs to be provided in the contract or separately in an easy-to-access, electronic spreadsheet format and in writing upon request.
- Eliminates applicability to the Teacher Retirement System of Texas Active-Care plans.

C.S.S.B. 2195 amends current law relating to the relationship between pharmacists or pharmacies and pharmacy benefit managers or health benefit plan issuers.

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 Subchapter D, Chapter 4151, Insurance Code, by adding Section 4151.155, as follows:

Sec. 4151.155. REDUCTION OF CERTAIN CLAIM PAYMENT AMOUNTS PROHIBITED. (a) Prohibits a pharmacy benefit manager from directly or indirectly reducing 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.

(b) Provides that nothing in this section prohibits a pharmacy benefit manager from increasing a claim payment amount after adjudication of the claim.

(c) Provides that notwithstanding any other law, this section applies to the Medicaid managed care program operated under Chapter 533 (Medicaid Managed Care Program), Government Code.

SECTION 2. Amends Chapter 562, Occupations Code, by adding Subchapter E, as follows:

SUBCHAPTER E. CONTRACTS WITH PHARMACISTS AND PHARMACIES

Sec. 562.201. DEFINITION. Defines "pharmacy benefit manager."

Sec. 562.202. APPLICABILITY OF SUBCHAPTER. (a) Provides that 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 certain insurance providers.

(b) Provides that notwithstanding any other law, this subchapter applies to:

(1) a small employer health benefit plan subject to Chapter 1501 (Health Insurance Portability and Availability Act), Insurance Code, including coverage provided through a health group cooperative under Subchapter B (Coalitions and Cooperatives), Chapter 1501;

(2) a standard health benefit plan issued under Chapter 1507 (Consumer Choice of Benefits Plans), Insurance Code;

(3) health benefits provided by or through a church benefits board under Subchapter I (Church Benefits Boards), Chapter 22 (Nonprofit Corporations), Business Organizations Code;

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

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

Sec. 562.203. PROFESSIONAL STANDARDS AND SCOPE OF PRACTICE REQUIREMENTS. Prohibits a health benefit plan issuer or pharmacy benefit manager from, as a condition of a contract with a pharmacist or pharmacy:

(1) requiring pharmacist or pharmacy accreditation standards or recertification requirements inconsistent with, more stringent than, or in addition to federal and state requirements; or

(2) prohibiting a licensed pharmacist or pharmacy from dispensing any drug, including a specialty drug, that is authorized to be dispensed under the

pharmacist's or pharmacy's license unless applicable state or federal law prohibits the pharmacist or pharmacy from dispensing the drug.

Sec. 562.204. RESTRICTIONS ON MAIL ORDER PHARMACY SERVICES. Prohibits a pharmacy benefit manager from requiring an enrollee to use a mail order pharmacy.

Sec. 562.205. DELIVERY OF DRUGS. Prohibits a health benefit plan issuer or pharmacy benefit manager, except in a case in which the health benefit plan issuer or pharmacy benefit manager makes a credible allegation of fraud against the pharmacist or pharmacy and provides reasonable notice of the allegation and the basis of the allegation to the pharmacist or pharmacy, from, as a condition of a contract with a pharmacist or pharmacy, prohibiting the pharmacist or pharmacy, from:

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

(2) charging a shipping and handling fee to a patient requesting a prescription be mailed or delivered if the pharmacist or pharmacy discloses to the patient before the delivery the fee that will be charged and that the fee is prohibited from being reimbursable by the health benefit plan issuer or pharmacy benefit manager.

Sec. 562.206. WAIVER PROHIBITED. Prohibits the provisions of this subchapter from being waived, voided, or nullified by contract.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2021.