87R3428 JES-F

By:  Lucio III H.B. No. 1093

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of pharmacy benefit managers and health benefit plan issuers in relation to prescription drug coverage.

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

SECTION 1.  Chapter 1369, Insurance Code, is amended by adding Subchaper A-1 to read as follows:

SUBCHAPTER A-1. COMPLAINTS

Sec. 1369.021.  COMPLAINTS AGAINST PHARMACY BENEFIT MANAGERS. (a) The commissioner may receive and review written complaints alleging violations of this chapter by a pharmacy benefit manager.

(b)  Based on review under Subsection (a), if the commissioner has reason to believe that a pharmacy benefit manager engaged in a course of conduct exhibited through a pattern or practice that violates this chapter or constitutes improper, fraudulent, or dishonest contract performance with the pharmacist or pharmacy, the commissioner may conduct any investigation necessary to determine whether the pattern or practice exists.

(c)  The commissioner shall take appropriate disciplinary action as provided by this code against the pharmacy benefit manager if the commissioner finds, based on an investigation authorized by Subsection (b), that the pharmacy benefit manager engaged in a course of conduct exhibited through a pattern or practice that violates this chapter or constitutes improper, fraudulent, or dishonest contract performance with the pharmacist or pharmacy.

(d)  The commissioner may exercise the subpoena authority under Section 36.152 in an investigation under this section.

SECTION 2.  Chapter 1369, Insurance Code, is amended by adding Subchapter I to read as follows:

SUBCHAPTER I. RELATIONSHIP TO PHARMACISTS AND PHARMACIES

Sec. 1369.551.  DEFINITIONS. In this subchapter:

(1)  "Affiliated pharmacist of pharmacy" means a pharmacist or pharmacy that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, a pharmacy benefit manager.

(2)  "Pharmacy benefit manager" means a person, other than a pharmacist or pharmacy, who acts as an administrator in connection with pharmacy benefits.

Sec. 1369.552.  APPLICABILITY OF SUBCHAPTER. (a) 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:

(1)  an insurance company;

(2)  a group hospital service corporation operating under Chapter 842;

(3)  a health maintenance organization operating under Chapter 843;

(4)  an approved nonprofit health corporation that holds a certificate of authority under Chapter 844;

(5)  a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846;

(6)  a stipulated premium company operating under Chapter 884;

(7)  a fraternal benefit society operating under Chapter 885;

(8)  a Lloyd's plan operating under Chapter 941; or

(9)  an exchange operating under Chapter 942.

(b)  Notwithstanding any other law, this subchapter applies to:

(1)  a small employer health benefit plan subject to Chapter 1501, including coverage provided through a health group cooperative under Subchapter B of that chapter;

(2)  a standard health benefit plan issued under Chapter 1507;

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

(4)  group health coverage made available by a school district in accordance with Section 22.004, Education Code;

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

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

(c)  This subchapter does not apply to an issuer or provider of health benefits under or a pharmacy benefit manager administering pharmacy benefits under a workers' compensation insurance policy or other form of providing medical benefits under Title 5, Labor Code.

Sec. 1369.553.  REDUCTION OF CERTAIN CLAIM PAYMENT AMOUNTS PROHIBITED. (a) A health benefit plan issuer or pharmacy benefit manager may not directly or indirectly reduce 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 performed under Subchapter F.

(b)  Nothing in this section prohibits a health benefit plan issuer or pharmacy benefit manager from increasing a claim payment amount after adjudication of the claim.

(c)  Notwithstanding any other law, this section applies to the Medicaid managed care program operated under Chapter 533, Government Code.

Sec. 1369.554.  PROFESSIONAL STANDARDS AND SCOPE OF PRACTICE REQUIREMENTS. A health benefit plan issuer or pharmacy benefit manager may not as a condition of a contract with a pharmacist or pharmacy:

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

(2)  prohibit a licensed pharmacist or pharmacy from dispensing any drug, including a specialty drug, that may 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. 1369.555.  RESTRICTIONS ON MAIL ORDER PHARMACY SERVICES. A pharmacy benefit manager may not require an enrollee to use a mail order pharmacy.

Sec. 1369.556.  DELIVERY OF DRUGS. 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, a health benefit plan issuer or pharmacy benefit manager may not as a condition of a contract with a pharmacist or pharmacy prohibit 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:

(A)  the fee that will be charged; and

(B)  that the fee may not be reimbursable by the health benefit plan issuer or pharmacy benefit manager.

Sec. 1369.557.  PROHIBITION ON CERTAIN REFERRALS. (a) A health benefit plan issuer or pharmacy benefit manager may not steer or direct a patient to use an affiliated pharmacist or pharmacy through:

(1)  any oral or written communication, including:

(A)  online messaging regarding the pharmacist or pharmacy; or

(B)  patient- or prospective patient-specific advertising, marketing, or promotion of the pharmacist or pharmacy; or

(2)  offering or implementing a health benefit plan design that requires or induces a patient to use an affiliated pharmacist or pharmacy, including by providing for reduced cost-sharing amounts if the patient uses the pharmacist or pharmacy.

(b)  This section does not prohibit a health benefit plan issuer or pharmacy benefit manager from including an affiliated pharmacist or pharmacy in the issuer's or manager's patient communications, including in a patient- or prospective patient-specific communication, if the communication:

(1)  is regarding in-network pharmacies and prices for a health benefit plan;

(2)  is accurate; and

(3)  includes in-network pharmacists or pharmacies that are not affiliated pharmacists or pharmacies.

(c)  An affiliated pharmacist or pharmacy may not present a claim for payment to any individual or entity, including to a third-party payor, health benefit plan, or pharmacy benefit manager, for a health care service or supply provided to a patient who was improperly steered or directed to use the affiliated pharmacist or pharmacy in violation of Subsection (a).

Sec. 1369.558.  PROHIBITION ON SHARING PATIENT INFORMATION FOR CERTAIN PURPOSES. (a) 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)  A health benefit plan issuer or pharmacy benefit manager may not transfer to or receive from an affiliated pharmacist or pharmacy a record containing patient- or prescriber-identifiable prescription information for a commercial purpose.

SECTION 3.  The change in law made by this Act applies only to a contract entered into or renewed on or after the effective date of this Act. A contract entered into or renewed before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 4.  This Act takes effect September 1, 2021.