By:  Harris, et al. H.B. No. 1919

A BILL TO BE ENTITLED

AN ACT

relating to certain prohibited practices for certain health benefit plan issuers and certain required and prohibited practices for certain pharmacy benefit managers, including pharmacy benefit managers participating in the Medicaid and child health plan programs.

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

SECTION 1.  Chapter 1369, Insurance Code, is amended by adding Subchapter L to read as follows:

SUBCHAPTER L. AFFILIATED PROVIDERS

Sec. 1369.551.  DEFINITIONS. In this subchapter:

(1)  "Affiliated provider" means 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.

(2)  "Health benefit plan" has the meaning assigned by Section 1369.251.

(3)  "Pharmacy benefit manager" has the meaning assigned by Section 4151.151.

Sec. 1369.552.  TRANSFER OR ACCEPTANCE OF CERTAIN RECORDS PROHIBITED. (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 the issuer's or manager's affiliated provider a record containing patient- or prescriber-identifiable prescription information for a commercial purpose.

Sec. 1369.553.  PROHIBITION ON CERTAIN COMMUNICATIONS. (a) A health benefit plan issuer or pharmacy benefit manager may not steer or direct 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 provider.

(b)  This section 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, if the communication:

(1)  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

(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) A health benefit plan issuer or pharmacy benefit manager may not require 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.

(b)  A health benefit plan issuer or pharmacy benefit manager may not offer or implement a health benefit plan 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)  A health benefit plan issuer or pharmacy benefit manager may not solicit a patient or prescriber to transfer a patient prescription to the issuer's or manager's affiliated provider.

(d)  A health benefit plan issuer or pharmacy benefit manager may not require 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.  Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.0695 to read as follows:

Sec. 531.0695.  REQUIRED FEE SCHEDULE FOR CERTAIN PHARMACY BENEFITS PROVIDED UNDER MEDICAID OR CHILD HEALTH PLAN PROGRAM. (a) In this section, "pharmacy benefit manager" has the meaning assigned by Section 4151.151, Insurance Code.

(b)  A contract between a pharmacy benefit manager and a managed care organization that contracts with the commission to provide pharmacy benefits under Medicaid or the child health plan program must contain a requirement that the pharmacy benefit manager have a fee schedule that applies to each pharmacy or pharmacist with which the pharmacy benefit manager contracts. The contract between the pharmacy benefit manager and the pharmacy or pharmacist must refer to the fee schedule and the pharmacy benefit manager shall 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)  A fee schedule provided under Subsection (b) must describe:

(1)  specific pharmacy benefits that the pharmacy or pharmacist may 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 may use to ascertain the corresponding reimbursement amount for a specific pharmacy benefit.

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

SECTION 4.  Section 531.0695, Government Code, as added 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 5.  If before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION 6.  This Act takes effect September 1, 2021.