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By:  Kolkhorst S.B. No. 2195

A BILL TO BE ENTITLED

AN ACT

relating to the relationship between pharmacists or pharmacies and pharmacy benefit managers or health benefit plan issuers, including relationships governed by contracts with managed care organizations under Medicaid and the child health plan program.

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

SECTION 1.  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 2.  Subchapter D, Chapter 4151, Insurance Code, is amended by adding Section 4151.155 to read as follows:

Sec. 4151.155.  REDUCTION OF CERTAIN CLAIM PAYMENT AMOUNTS PROHIBITED. (a) A 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.

(b)  Nothing in this section prohibits a 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.

SECTION 3.  Chapter 562, Occupations Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. CONTRACTS WITH PHARMACISTS AND PHARMACIES

Sec. 562.201.  DEFINITION. In this subchapter, "pharmacy benefit manager" has the meaning assigned by Section 4151.151, Insurance Code.

Sec. 562.202.  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, Insurance Code;

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

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

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

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

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

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

(9)  an exchange operating under Chapter 942, Insurance Code.

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

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

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

(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.

Sec. 562.203.  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. 562.204.  RESTRICTIONS ON MAIL ORDER PHARMACY SERVICES. A pharmacy benefit manager may not require an enrollee to use a mail order pharmacy.

Sec. 562.205.  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. 562.206.  WAIVER PROHIBITED. The provisions of this subchapter may not be waived, voided, or nullified by contract.

SECTION 4.  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 5.  This Act takes effect September 1, 2021.