

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 Subchapter 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,

1 fraudulent, or dishonest contract performance with the pharmacist
2 or pharmacy.

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

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

7 SUBCHAPTER I. RELATIONSHIP TO PHARMACISTS AND PHARMACIES

8 Sec. 1369.551. DEFINITIONS. In this subchapter:

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

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

16 Sec. 1369.552. APPLICABILITY OF SUBCHAPTER. (a) This
17 subchapter applies only to a health benefit plan that provides
18 benefits for medical or surgical expenses incurred as a result of a
19 health condition, accident, or sickness, including an individual,
20 group, blanket, or franchise insurance policy or insurance
21 agreement, a group hospital service contract, or an individual or
22 group evidence of coverage or similar coverage document that is
23 offered by:

24 (1) an insurance company;

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

27 (3) a health maintenance organization operating under

1 Chapter 843;

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

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

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

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

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

11 (9) an exchange operating under Chapter 942.

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

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

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

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

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

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

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

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

6 Sec. 1369.553. REDUCTION OF CERTAIN CLAIM PAYMENT AMOUNTS
7 PROHIBITED. (a) A health benefit plan issuer or pharmacy benefit
8 manager may not directly or indirectly reduce the amount of a claim
9 payment to a pharmacist or pharmacy after adjudication of the claim
10 through the use of an aggregated effective rate, a quality
11 assurance program, other direct or indirect remuneration fee, or
12 otherwise, except in accordance with an audit performed under
13 Subchapter F.

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

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

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

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

1 (2) prohibit a licensed pharmacist or pharmacy from
2 dispensing any drug, including a specialty drug, that may be
3 dispensed under the pharmacist's or pharmacy's license unless
4 applicable state or federal law prohibits the pharmacist or
5 pharmacy from dispensing the drug.

6 Sec. 1369.555. RESTRICTIONS ON MAIL ORDER PHARMACY
7 SERVICES. A pharmacy benefit manager may not require an enrollee to
8 use a mail order pharmacy.

9 Sec. 1369.556. DELIVERY OF DRUGS. Except in a case in which
10 the health benefit plan issuer or pharmacy benefit manager makes a
11 credible allegation of fraud against the pharmacist or pharmacy and
12 provides reasonable notice of the allegation and the basis of the
13 allegation to the pharmacist or pharmacy, a health benefit plan
14 issuer or pharmacy benefit manager may not as a condition of a
15 contract with a pharmacist or pharmacy prohibit the pharmacist or
16 pharmacy from:

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

19 (2) charging a shipping and handling fee to a patient
20 requesting a prescription be mailed or delivered if the pharmacist
21 or pharmacy discloses to the patient before the delivery:

22 (A) the fee that will be charged; and

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

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

1 pharmacy through:

2 (1) any oral or written communication, including:

3 (A) online messaging regarding the pharmacist or

4 pharmacy; or

5 (B) patient- or prospective patient-specific

6 advertising, marketing, or promotion of the pharmacist or pharmacy;

7 or

8 (2) offering or implementing a health benefit plan

9 design that requires or induces a patient to use an affiliated

10 pharmacist or pharmacy, including by providing for reduced

11 cost-sharing amounts if the patient uses the pharmacist or

12 pharmacy.

13 (b) This section does not prohibit a health benefit plan

14 issuer or pharmacy benefit manager from including an affiliated

15 pharmacist or pharmacy in the issuer's or manager's patient

16 communications, including in a patient- or prospective

17 patient-specific communication, if the communication:

18 (1) is regarding in-network pharmacies and prices for

19 a health benefit plan;

20 (2) is accurate; and

21 (3) includes in-network pharmacists or pharmacies

22 that are not affiliated pharmacists or pharmacies.

23 (c) An affiliated pharmacist or pharmacy may not present a

24 claim for payment to any individual or entity, including to a

25 third-party payor, health benefit plan, or pharmacy benefit

26 manager, for a health care service or supply provided to a patient

27 who was improperly steered or directed to use the affiliated

1 pharmacist or pharmacy in violation of Subsection (a).

2 Sec. 1369.558. PROHIBITION ON SHARING PATIENT INFORMATION
3 FOR CERTAIN PURPOSES. (a) In this section, "commercial purpose"
4 does not include pharmacy reimbursement, formulary compliance,
5 pharmaceutical care, utilization review by a health care provider,
6 or a public health activity authorized by law.

7 (b) A health benefit plan issuer or pharmacy benefit manager
8 may not transfer to or receive from an affiliated pharmacist or
9 pharmacy a record containing patient- or prescriber-identifiable
10 prescription information for a commercial purpose.

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

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