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H.B. No. 1763

A BILL TO BE ENTITLED

AN ACT

relating to the contractual relationship between a pharmacist or pharmacy and a health benefit plan issuer or pharmacy benefit manager.

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. CONTRACTS WITH PHARMACISTS AND PHARMACIES

Sec. 1369.551. DEFINITIONS. In this subchapter:

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

(2) "Pharmacy benefit network" means a network of pharmacies that have contracted with a pharmacy benefit manager to provide pharmacist services to enrollees.

(3) "Pharmacy services administrative organization" means an entity that contracts with a pharmacist or pharmacy to conduct on behalf of the pharmacist or pharmacy the pharmacist's or pharmacy's business with a third-party payor, including a pharmacy benefit manager, in connection with pharmacy benefits and to assist the pharmacist or pharmacy by providing administrative services, including negotiating, executing, and administering a contract with a third-party payor and communicating with the third-party payor in connection with a contract or pharmacy benefits.

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

1 subchapter applies only to a health benefit plan that provides  
2 benefits for medical or surgical expenses incurred as a result of a  
3 health condition, accident, or sickness, including an individual,  
4 group, blanket, or franchise insurance policy or insurance  
5 agreement, a group hospital service contract, or an individual or  
6 group evidence of coverage or similar coverage document that is  
7 offered by:

8 (1) an insurance company;

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

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

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

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

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

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

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

22 (9) an exchange operating under Chapter 942.

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

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

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

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

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

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

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

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

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

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

27           Sec. 1369.554. REIMBURSEMENT OF AFFILIATED AND

1 NONAFFILIATED PHARMACISTS AND PHARMACIES. (a) In this section:

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

6 (2) "Nonaffiliated pharmacist or pharmacy" means a  
7 pharmacist or pharmacy that does not directly, or indirectly  
8 through one or more intermediaries, control and is not controlled  
9 by or under common control with a pharmacy benefit manager.

10 (b) A pharmacy benefit manager may not pay an affiliated  
11 pharmacist or pharmacy a reimbursement amount that is more than the  
12 amount the pharmacy benefit manager pays a nonaffiliated pharmacist  
13 or pharmacy for the same pharmacist service.

14 Sec. 1369.555. NETWORK CONTRACT FEE SCHEDULE. A pharmacy  
15 benefit network contract must specify or reference a separate fee  
16 schedule. Unless otherwise available in the contract, the fee  
17 schedule must be provided electronically in an easily accessible  
18 and complete spreadsheet format and, on request, in writing to each  
19 contracted pharmacist and pharmacy. The fee schedule must  
20 describe:

21 (1) specific services or procedures that the  
22 pharmacist or pharmacy may deliver and the amount of the  
23 corresponding payment;

24 (2) a methodology for calculating the amount of the  
25 payment based on a published fee schedule; or

26 (3) any other reasonable manner that provides an  
27 ascertainable amount for payment for services.

1           Sec. 1369.556. DISCLOSURE OF PHARMACY SERVICES  
2 ADMINISTRATIVE ORGANIZATION CONTRACT. A pharmacist or pharmacy  
3 that is a member of a pharmacy services administrative organization  
4 that enters into a contract with a health benefit plan issuer or  
5 pharmacy benefit manager on the pharmacist's or pharmacy's behalf  
6 is entitled to receive from the pharmacy services administrative  
7 organization a copy of the contract provisions applicable to the  
8 pharmacist or pharmacy, including each provision relating to the  
9 pharmacist's or pharmacy's rights and obligations under the  
10 contract.

11           Sec. 1369.557. DELIVERY OF DRUGS. (a) Except in a case in  
12 which the health benefit plan issuer or pharmacy benefit manager  
13 makes a credible allegation of fraud against the pharmacist or  
14 pharmacy and provides reasonable notice of the allegation and the  
15 basis of the allegation to the pharmacist or pharmacy, a health  
16 benefit plan issuer or pharmacy benefit manager may not as a  
17 condition of a contract with a pharmacist or pharmacy prohibit the  
18 pharmacist or pharmacy from:

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

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

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

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

27           (b) A pharmacist or pharmacy may not charge a health benefit

1 plan issuer or pharmacy benefit manager for the delivery of a  
2 prescription drug as described by this section unless the charge is  
3 specifically agreed to by the health benefit plan issuer or  
4 pharmacy benefit manager.

5 Sec. 1369.558. PROFESSIONAL STANDARDS AND SCOPE OF PRACTICE  
6 REQUIREMENTS. A health benefit plan issuer or pharmacy benefit  
7 manager may not as a condition of a contract with a pharmacist or  
8 pharmacy:

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

13 (2) prohibit a licensed pharmacist or pharmacy from  
14 dispensing any drug that may be dispensed under the pharmacist's or  
15 pharmacy's license unless:

16 (A) applicable state or federal law prohibits the  
17 pharmacist or pharmacy from dispensing the drug; or

18 (B) the manufacturer of the drug requires that a  
19 pharmacist or pharmacy possess one or more accreditations or  
20 certifications to dispense the drug and the pharmacist or pharmacy  
21 does not meet the requirement.

22 Sec. 1369.559. RETALIATION PROHIBITED. (a) A pharmacy  
23 benefit manager may not retaliate against a pharmacist or pharmacy  
24 based on the pharmacist's or pharmacy's exercise of any right or  
25 remedy under this chapter. Retaliation prohibited by this section  
26 includes:

27 (1) terminating or refusing to renew a contract with

1 the pharmacist or pharmacy;

2 (2) subjecting the pharmacist or pharmacy to increased  
3 audits; or

4 (3) failing to promptly pay the pharmacist or pharmacy  
5 any money owed by the pharmacy benefit manager to the pharmacist or  
6 pharmacy.

7 (b) For purposes of this section, a pharmacy benefit manager  
8 is not considered to have retaliated against a pharmacist or  
9 pharmacy if the pharmacy benefit manager:

10 (1) takes an action in response to a credible  
11 allegation of fraud against the pharmacist or pharmacy; and

12 (2) provides reasonable notice to the pharmacist or  
13 pharmacy of the allegation of fraud and the basis of the allegation  
14 before taking the action.

15 Sec. 1369.560. WAIVER PROHIBITED. The provisions of this  
16 subchapter may not be waived, voided, or nullified by contract.

17 SECTION 2. The change in law made by this Act applies only  
18 to a contract entered into or renewed on or after the effective date  
19 of this Act. A contract entered into or renewed before the  
20 effective date of this Act is governed by the law as it existed  
21 immediately before the effective date of this Act, and that law is  
22 continued in effect for that purpose.

23 SECTION 3. This Act takes effect September 1, 2021.