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H.B. No. 1763

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the contractual relationship between a pharmacist or  
3 pharmacy and a health benefit plan issuer or pharmacy benefit  
4 manager.

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

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

8 SUBCHAPTER L. CONTRACTS WITH PHARMACISTS AND PHARMACIES

9 Sec. 1369.551. DEFINITIONS. In this subchapter:

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

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

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

24 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:

24           (1) in accordance with an audit performed under  
25 Subchapter F; or

26           (2) by mutual agreement of the parties under a  
27 pharmacy benefit network contract under which the health benefit

1 plan issuer or pharmacy benefit manager does not require as a  
2 condition of the pharmacy benefit network contract or of  
3 participation in the pharmacy benefit network that a pharmacist or  
4 pharmacy agree to allow the health benefit plan issuer or pharmacy  
5 benefit manager to reduce the amount of a claim payment to the  
6 pharmacist or pharmacy after adjudication of the claim.

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

10 Sec. 1369.554. REIMBURSEMENT OF AFFILIATED AND  
11 NONAFFILIATED PHARMACISTS AND PHARMACIES. (a) In this section:

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

16 (2) "Nonaffiliated pharmacist or pharmacy" means a  
17 pharmacist or pharmacy that does not directly, or indirectly  
18 through one or more intermediaries, control and is not controlled  
19 by or under common control with a pharmacy benefit manager.

20 (b) A pharmacy benefit manager may not pay an affiliated  
21 pharmacist or pharmacy a reimbursement amount that is more than the  
22 amount the pharmacy benefit manager pays a nonaffiliated pharmacist  
23 or pharmacy for the same pharmacist service.

24 Sec. 1369.555. NETWORK CONTRACT FEE SCHEDULE. A pharmacy  
25 benefit network contract must specify or reference a separate fee  
26 schedule. Unless otherwise available in the contract, the fee  
27 schedule must be provided electronically in an easily accessible

1 and complete spreadsheet format and, on request, in writing to each  
2 contracted pharmacist and pharmacy. The fee schedule must  
3 describe:

4 (1) specific services or procedures that the  
5 pharmacist or pharmacy may deliver and the amount of the  
6 corresponding payment;

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

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

11 Sec. 1369.556. DISCLOSURE OF PHARMACY SERVICES  
12 ADMINISTRATIVE ORGANIZATION CONTRACT. A pharmacist or pharmacy  
13 that is a member of a pharmacy services administrative organization  
14 that enters into a contract with a health benefit plan issuer or  
15 pharmacy benefit manager on the pharmacist's or pharmacy's behalf  
16 is entitled to receive from the pharmacy services administrative  
17 organization a copy of the contract provisions applicable to the  
18 pharmacist or pharmacy, including each provision relating to the  
19 pharmacist's or pharmacy's rights and obligations under the  
20 contract.

21 Sec. 1369.557. DELIVERY OF DRUGS. (a) Except in a case in  
22 which the health benefit plan issuer or pharmacy benefit manager  
23 makes a credible allegation of fraud against the pharmacist or  
24 pharmacy and provides reasonable notice of the allegation and the  
25 basis of the allegation to the pharmacist or pharmacy, a health  
26 benefit plan issuer or pharmacy benefit manager may not as a  
27 condition of a contract with a pharmacist or pharmacy prohibit the

1 pharmacist or pharmacy from:

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

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

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

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

10 (b) A pharmacist or pharmacy may not charge a health benefit  
11 plan issuer or pharmacy benefit manager for the delivery of a  
12 prescription drug as described by this section unless the charge is  
13 specifically agreed to by the health benefit plan issuer or  
14 pharmacy benefit manager.

15 (c) Notwithstanding Subsection (a), a health benefit plan  
16 issuer or pharmacy benefit manager may as a condition of contract  
17 prohibit a pharmacist or pharmacy from mailing the drugs for more  
18 than 25 percent of the claims the pharmacist or pharmacy submits to  
19 the health benefit plan issuer or pharmacy benefit manager during a  
20 calendar year.

21 Sec. 1369.558. PROFESSIONAL STANDARDS AND SCOPE OF PRACTICE  
22 REQUIREMENTS. (a) A health benefit plan issuer or pharmacy benefit  
23 manager may not as a condition of a contract with a pharmacist or  
24 pharmacy:

25 (1) except as provided by Subsection (b), require  
26 pharmacist or pharmacy accreditation standards or recertification  
27 requirements inconsistent with, more stringent than, or in addition

1 to federal and state requirements; or

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

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

7 (B) the manufacturer of the drug requires that a  
8 pharmacist or pharmacy possess one or more accreditations or  
9 certifications to dispense the drug and the pharmacist or pharmacy  
10 does not meet the requirement.

11 (b) A health benefit plan issuer or pharmacy benefit manager  
12 may require as a condition of a contract with a specialty pharmacy  
13 that the specialty pharmacy obtain accreditation from not more than  
14 two of the following independent accreditation organizations:

15 (1) URAC, formerly the Utilization Review  
16 Accreditation Commission;

17 (2) The Joint Commission;

18 (3) Accreditation Commission for Health Care (ACHC);

19 (4) Center for Pharmacy Practice Accreditation  
20 (CPPA); or

21 (5) National Committee for Quality Assurance (NCQA).

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.