

By: Oliverson

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:

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.