

By: Kolkhorst, et al.

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.

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

SECTION 1. 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 2. 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,

1 Insurance Code.

2 Sec. 562.202. APPLICABILITY OF SUBCHAPTER. (a) This
3 subchapter applies only to a health benefit plan that provides
4 benefits for medical or surgical expenses incurred as a result of a
5 health condition, accident, or sickness, including an individual,
6 group, blanket, or franchise insurance policy or insurance
7 agreement, a group hospital service contract, or an individual or
8 group evidence of coverage or similar coverage document that is
9 offered by:

10 (1) an insurance company;

11 (2) a group hospital service corporation operating
12 under Chapter 842, Insurance Code;

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

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

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

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

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

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

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

27 (b) Notwithstanding any other law, this subchapter applies

1 to:

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

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

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

10 (4) a regional or local health care program operated
11 under Section 75.104, Health and Safety Code; and

12 (5) a self-funded health benefit plan sponsored by a
13 professional employer organization under Chapter 91, Labor Code.

14 Sec. 562.203. PROFESSIONAL STANDARDS AND SCOPE OF PRACTICE
15 REQUIREMENTS. A health benefit plan issuer or pharmacy benefit
16 manager may not as a condition of a contract with a pharmacist or
17 pharmacy:

18 (1) require pharmacist or pharmacy accreditation
19 standards or recertification requirements inconsistent with, more
20 stringent than, or in addition to federal and state requirements;
21 or

22 (2) prohibit a licensed pharmacist or pharmacy from
23 dispensing any drug, including a specialty drug, that may be
24 dispensed under the pharmacist's or pharmacy's license unless
25 applicable state or federal law prohibits the pharmacist or
26 pharmacy from dispensing the drug.

27 Sec. 562.204. RESTRICTIONS ON MAIL ORDER PHARMACY SERVICES.

1 A pharmacy benefit manager may not require an enrollee to use a mail
2 order pharmacy.

3 Sec. 562.205. DELIVERY OF DRUGS. Except in a case in which
4 the health benefit plan issuer or pharmacy benefit manager makes a
5 credible allegation of fraud against the pharmacist or pharmacy and
6 provides reasonable notice of the allegation and the basis of the
7 allegation to the pharmacist or pharmacy, a health benefit plan
8 issuer or pharmacy benefit manager may not as a condition of a
9 contract with a pharmacist or pharmacy prohibit the pharmacist or
10 pharmacy from:

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

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

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

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

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

21 SECTION 3. The Health and Human Services Commission is
22 required to implement a provision of this Act only if the
23 legislature appropriates money to the commission specifically for
24 that purpose. If the legislature does not appropriate money
25 specifically for that purpose, the commission may, but is not
26 required to, implement a provision of this Act using other
27 appropriations that are available for that purpose.

1 SECTION 4. The change in law made by this Act applies only
2 to a contract entered into or renewed on or after the effective date
3 of this Act. A contract entered into or renewed before the
4 effective date of this Act is governed by the law as it existed
5 immediately before the effective date of this Act, and that law is
6 continued in effect for that purpose.

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