

By: Kolkhorst

S.B. No. 2195

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the relationship between pharmacists or pharmacies and
3 pharmacy benefit managers or health benefit plan issuers, including
4 relationships governed by contracts with managed care
5 organizations under Medicaid and the child health plan program.

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

7 SECTION 1. Subchapter B, Chapter 531, Government Code, is
8 amended by adding Section 531.0695 to read as follows:

9 Sec. 531.0695. REQUIRED FEE SCHEDULE FOR CERTAIN PHARMACY
10 BENEFITS PROVIDED UNDER MEDICAID OR CHILD HEALTH PLAN PROGRAM. (a)
11 In this section, "pharmacy benefit manager" has the meaning
12 assigned by Section 4151.151, Insurance Code.

13 (b) A contract between a pharmacy benefit manager and a
14 managed care organization that contracts with the commission to
15 provide pharmacy benefits under Medicaid or the child health plan
16 program must contain a requirement that the pharmacy benefit
17 manager have a fee schedule that applies to each pharmacy or
18 pharmacist with which the pharmacy benefit manager contracts. The
19 contract between the pharmacy benefit manager and the pharmacy or
20 pharmacist must refer to the fee schedule and the pharmacy benefit
21 manager shall provide the fee schedule:

22 (1) in the contract; or

23 (2) separately in an easy-to-access, electronic
24 spreadsheet format and, on request by the pharmacy or pharmacist,

1 in writing.

2 (c) A fee schedule provided under Subsection (b) must
3 describe:

4 (1) specific pharmacy benefits that the pharmacy or
5 pharmacist may deliver and the amount of the corresponding
6 reimbursement for those benefits;

7 (2) the methodology used to calculate the
8 reimbursement for specific pharmacy benefits; or

9 (3) another reasonable method that a pharmacy or
10 pharmacist may use to ascertain the corresponding reimbursement
11 amount for a specific pharmacy benefit.

12 SECTION 2. Subchapter D, Chapter 4151, Insurance Code, is
13 amended by adding Section 4151.155 to read as follows:

14 Sec. 4151.155. REDUCTION OF CERTAIN CLAIM PAYMENT AMOUNTS
15 PROHIBITED. (a) A pharmacy benefit manager may not directly or
16 indirectly reduce the amount of a claim payment to a pharmacist or
17 pharmacy after adjudication of the claim through the use of an
18 aggregated effective rate, a quality assurance program, other
19 direct or indirect remuneration fee, or otherwise, except in
20 accordance with an audit.

21 (b) Nothing in this section prohibits a pharmacy benefit
22 manager from increasing a claim payment amount after adjudication
23 of the claim.

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

27 SECTION 3. Chapter 562, Occupations Code, is amended by

1 adding Subchapter E to read as follows:

2 SUBCHAPTER E. CONTRACTS WITH PHARMACISTS AND PHARMACIES

3 Sec. 562.201. DEFINITION. In this subchapter, "pharmacy
4 benefit manager" has the meaning assigned by Section 4151.151,
5 Insurance Code.

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

14 (1) an insurance company;

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

17 (3) a health maintenance organization operating under
18 Chapter 843, Insurance Code;

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

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

23 (6) a stipulated premium company operating under
24 Chapter 884, Insurance Code;

25 (7) a fraternal benefit society operating under
26 Chapter 885, Insurance Code;

27 (8) a Lloyd's plan operating under Chapter 941,

1 Insurance Code; or

2 (9) an exchange operating under Chapter 942, Insurance
3 Code.

4 (b) Notwithstanding any other law, this subchapter applies
5 to:

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

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

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

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

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

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

20 Sec. 562.203. 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. 562.204. RESTRICTIONS ON MAIL ORDER PHARMACY SERVICES.
7 A pharmacy benefit manager may not require an enrollee to use a mail
8 order pharmacy.

9 Sec. 562.205. 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. 562.206. WAIVER PROHIBITED. The provisions of this
26 subchapter may not be waived, voided, or nullified by contract.

27 SECTION 4. The change in law made by this Act applies only

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

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