### **SENATE AMENDMENTS**

### 2<sup>nd</sup> Printing

By: Harris, et al.

H.B. No. 1919

#### A BILL TO BE ENTITLED

Τ	AN ACT
2	relating to certain prohibited practices for certain health benefit
3	plan issuers and certain required and prohibited practices for
4	certain pharmacy benefit managers, including pharmacy benefit
5	managers participating in the Medicaid and child health plan
6	programs.
7	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
8	SECTION 1. Chapter 1369, Insurance Code, is amended by
9	adding Subchapter L to read as follows:
10	SUBCHAPTER L. AFFILIATED PROVIDERS
11	Sec. 1369.551. DEFINITIONS. In this subchapter:
12	(1) "Affiliated provider" means a pharmacy or durable
13	medical equipment provider that directly, or indirectly through one
14	or more intermediaries, controls, is controlled by, or is under
15	common control with a health benefit plan issuer or pharmacy
16	benefit manager.
17	(2) "Health benefit plan" has the meaning assigned by
18	Section 1369.251.
19	(3) "Pharmacy benefit manager" has the meaning
20	assigned by Section 4151.151.
21	Sec. 1369.552. TRANSFER OR ACCEPTANCE OF CERTAIN RECORDS
22	PROHIBITED. (a) In this section, "commercial purpose" does not
23	include pharmacy reimbursement, formulary compliance,
24	pharmaceutical care, utilization review by a health care provider,

- 1 or a public health activity authorized by law.
- 2 (b) A health benefit plan issuer or pharmacy benefit manager
- 3 may not transfer to or receive from the issuer's or manager's
- 4 affiliated provider a record containing patient- or
- 5 prescriber-identifiable prescription information for a commercial
- 6 purpose.
- 7 Sec. 1369.553. PROHIBITION ON CERTAIN COMMUNICATIONS. (a)
- 8 A health benefit plan issuer or pharmacy benefit manager may not
- 9 steer or direct a patient to use the issuer's or manager's
- 10 affiliated provider through any oral or written communication,
- 11 including:
- 12 (1) online messaging regarding the provider; or
- 13 (2) patient- or prospective patient-specific
- 14 advertising, marketing, or promotion of the provider.
- 15 (b) This section does not prohibit a health benefit plan
- 16 issuer or pharmacy benefit manager from including the issuer's or
- 17 manager's affiliated provider in a patient or prospective patient
- 18 communication, if the communication:
- 19 (1) is regarding information about the cost or service
- 20 provided by pharmacies or durable medical equipment providers in
- 21 the network of a health benefit plan in which the patient or
- 22 prospective patient is enrolled; and
- 23 (2) includes accurate comparable information
- 24 regarding pharmacies or durable medical equipment providers in the
- 25 network that are not the issuer's or manager's affiliated
- 26 providers.
- Sec. 1369.554. PROHIBITION ON CERTAIN REFERRALS AND

- H.B. No. 1919
- 1 SOLICITATIONS. (a) A health benefit plan issuer or pharmacy
- 2 benefit manager may not require a patient to use the issuer's or
- 3 manager's affiliated provider in order for the patient to receive
- 4 the maximum benefit for the service under the patient's health
- 5 benefit plan.
- 6 (b) A health benefit plan issuer or pharmacy benefit manager
- 7 may not offer or implement a health benefit plan that requires or
- 8 induces a patient to use the issuer's or manager's affiliated
- 9 provider, including by providing for reduced cost-sharing if the
- 10 patient uses the affiliated provider.
- 11 (c) A health benefit plan issuer or pharmacy benefit manager
- 12 may not solicit a patient or prescriber to transfer a patient
- 13 prescription to the issuer's or manager's affiliated provider.
- 14 (d) A health benefit plan issuer or pharmacy benefit manager
- 15 may not require a pharmacy or durable medical equipment provider
- 16 that is not the issuer's or manager's affiliated provider to
- 17 transfer a patient's prescription to the issuer's or manager's
- 18 affiliated provider without the prior written consent of the
- 19 patient.
- SECTION 2. Subchapter B, Chapter 531, Government Code, is
- 21 amended by adding Section 531.0695 to read as follows:
- 22 <u>Sec. 531.0695. REQUIRED FEE SCHEDULE FOR CERTAIN PHARMACY</u>
- 23 BENEFITS PROVIDED UNDER MEDICAID OR CHILD HEALTH PLAN PROGRAM. (a)
- 24 In this section, "pharmacy benefit manager" has the meaning
- 25 <u>assigned by Section 4151.151, Insurance Code.</u>
- 26 (b) A contract between a pharmacy benefit manager and a
- 27 managed care organization that contracts with the commission to

- 1 provide pharmacy benefits under Medicaid or the child health plan
- 2 program must contain a requirement that the pharmacy benefit
- 3 manager have a fee schedule that applies to each pharmacy or
- 4 pharmacist with which the pharmacy benefit manager contracts. The
- 5 contract between the pharmacy benefit manager and the pharmacy or
- 6 pharmacist must refer to the fee schedule and the pharmacy benefit
- 7 manager shall provide the fee schedule:
- 8 (1) in the contract; or
- 9 (2) separately in an easy-to-access, electronic
- 10 spreadsheet format and, on request by the pharmacy or pharmacist,
- 11 <u>in writing.</u>
- 12 (c) A fee schedule provided under Subsection (b) must
- 13 describe:
- 14 (1) specific pharmacy benefits that the pharmacy or
- 15 pharmacist may deliver and the amount of the corresponding
- 16 reimbursement for those benefits;
- 17 (2) the methodology used to calculate the
- 18 reimbursement for specific pharmacy benefits; or
- 19 (3) another reasonable method that a pharmacy or
- 20 pharmacist may use to ascertain the corresponding reimbursement
- 21 amount for a specific pharmacy benefit.
- SECTION 3. Sections 1369.554(a) and (b), Insurance Code, as
- 23 added by this Act, apply only to a health benefit plan delivered,
- 24 issued for delivery, or renewed on or after the effective date of
- 25 this Act.
- SECTION 4. Section 531.0695, Government Code, as added by
- 27 this Act, applies only to a contract entered into or renewed on or

H.B. No. 1919

- 1 after the effective date of this Act. A contract entered into or
- 2 renewed before the effective date of this Act is governed by the law
- 3 as it existed immediately before the effective date of this Act, and
- 4 that law is continued in effect for that purpose.
- 5 SECTION 5. If before implementing any provision of this Act
- 6 a state agency determines that a waiver or authorization from a
- 7 federal agency is necessary for implementation of that provision,
- 8 the agency affected by the provision shall request the waiver or
- 9 authorization and may delay implementing that provision until the
- 10 waiver or authorization is granted.
- 11 SECTION 6. This Act takes effect September 1, 2021.



By: Schwertner H.B. No. 1919:

By: C.S.H.B. No. 1919

#### A BILL TO BE ENTITLED

1 AN ACT relating to certain prohibited practices for certain health benefit plan issuers and certain required and prohibited practices for certain pharmacy benefit managers. BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS: SECTION 1. Chapter 1369, Insurance Code, is amended by 6 adding Subchapters L and M to read as follows: SUBCHAPTER L. AFFILIATED PROVIDERS Sec. 1369.551. DEFINITIONS. In this subchapter: 9 (1) "Affiliated provider" means a pharmacy or durable 10 medical equipment provider that directly, or indirectly through one 11 or more intermediaries, controls, is controlled by, or is under 12 common control with a health benefit plan issuer or pharmacy benefit manager. 14 (2) "Health benefit plan" has the meaning assigned by 15 Section 1369.251. 16 (3) "Pharmacy benefit manager" has the meaning 17 18 assigned by Section 4151.151. Sec. 1369.552. EXCEPTIONS TO APPLICABILITY OF SUBCHAPTER. 19 Notwithstanding the definition of "health benefit plan" provided by 20 Section 1369.551, this subchapter does not apply to an issuer or 21 22 provider of health benefits under or a pharmacy benefit manager 23 administering pharmacy benefits under: (1) the state Medicaid program, including the Medicaid 24

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managed care program operated under Chapter 533, Government Code;
              (2) the child health plan program under Chapter 62,
   Health and Safety Code;
               (3) the TRICARE military health system;
               (4)
                   a basic coverage plan under Chapter 1551;
               (5)
                   a basic plan under Chapter 1575;
               (6) a primary care coverage plan under Chapter 1579;
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               (7) a plan providing basic coverage under Chapter
9
   1601; or
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               (8) a workers' compensation insurance policy or other
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   form of providing medical benefits under Title 5, Labor Code.
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         Sec. 1369.553. TRANSFER OR ACCEPTANCE OF CERTAIN RECORDS
   PROHIBITED. (a) In this section, "commercial purpose" does not
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   include pharmacy reimbursement, formulary compliance,
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   pharmaceutical care, utilization review by a health care provider,
   or a public health activity authorized by law.
          (b) A health benefit plan issuer or pharmacy benefit manager
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   may not transfer to or receive from the issuer's or manager's
    affiliated provider a record containing patient- or
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    prescriber-identifiable prescription information for a commercial
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   purpose.
          Sec. 1369.554. PROHIBITION ON CERTAIN COMMUNICATIONS. (a)
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    A health benefit plan issuer or pharmacy benefit manager may not
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    steer or direct a patient to use the issuer's or manager's
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    affiliated provider through any oral or written communication,
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    including:
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               (1) online messaging regarding the provider; or
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              (2) patient- or prospective patient-specific
   advertising, marketing, or promotion of the provider.
         (b) This section does not prohibit a health benefit plan
   issuer or pharmacy benefit manager from including the issuer's or
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   manager's affiliated provider in a patient or prospective patient
   communication, if the communication:
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              (1) is regarding information about the cost or service
   provided by pharmacies or durable medical equipment providers in
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   the network of a health benefit plan in which the patient or
   prospective patient is enrolled; and
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              (2) includes accurate comparable information
   regarding pharmacies or durable medical equipment providers in the
   network that are not the issuer's or manager's affiliated
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   providers.
15
         Sec. 1369.555. PROHIBITION ON CERTAIN REFERRALS AND
   SOLICITATIONS. (a) A health benefit plan issuer or pharmacy
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   benefit manager may not require a patient to use the issuer's or
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   manager's affiliated provider in order for the patient to receive
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   the maximum benefit for the service under the patient's health
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   benefit plan.
21
         (b) A health benefit plan issuer or pharmacy benefit manager
   may not offer or implement a health benefit plan that requires or
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   induces a patient to use the issuer's or manager's affiliated
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   provider, including by providing for reduced cost-sharing if the
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patient uses the affiliated provider.

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may not solicit a patient or prescriber to transfer a patient

(c) A health benefit plan issuer or pharmacy benefit manager

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   prescription to the issuer's or manager's affiliated provider.
         (d) A health benefit plan issuer or pharmacy benefit manager
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   may not require a pharmacy or durable medical equipment provider
   that is not the issuer's or manager's affiliated provider to
   transfer a patient's prescription to the issuer's or manager's
   affiliated provider without the prior written consent of the
   patient.
8
               SUBCHAPTER M. CLINICIAN-ADMINISTERED DRUGS
         Sec. 1369.601. DEFINITIONS. In this subchapter:
9
               (1) "Affiliated provider" means a pharmacy or durable
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   medical equipment provider that directly, or indirectly through one
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   or more intermediaries, controls, is controlled by, or is under
12
   common control with a health benefit plan issuer or pharmacy
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   benefit manager.
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               (2) "Clinician-administered drug" means an outpatient
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   prescription drug other than a vaccine that:
17
                    (A) cannot reasonably be:
18
                         (i) self-administered by the patient to
19
   whom the drug is prescribed; or
20
                         (ii) administered by an individual
21
    assisting the patient with the self-administration; and
22
                    (B) is typically administered:
23
                         (i) by a physician or other health care
   provider authorized under the laws of this state to administer the
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   drug, including when acting under a physician's delegation and
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   supervision; and
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                         (ii) in a physician's office, hospital
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outpatient infusion center, or other clinical setting.
               (3) "Health care provider" means an individual who is
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   licensed, certified, or otherwise authorized to provide health care
   services in this state.
               (4) "Pharmacy benefit manager" has the meaning
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6
   assigned by Section 4151.151.
               (5) "Physician" means an individual licensed to
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   practice medicine in this state.
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         Sec. 1369.602. APPLICABILITY OF SUBCHAPTER. (a) This
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   subchapter applies only to a health benefit plan that provides
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   benefits for medical or surgical expenses incurred as a result of a
   health condition, accident, or sickness, including an individual,
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   group, blanket, or franchise insurance policy or insurance
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   agreement, a group hospital service contract, or an individual or
   group evidence of coverage or similar coverage document that is
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   offered by:
               (1) an insurance company;
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               (2) a group hospital service corporation operating
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   under Chapter 842;
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               (3) a health maintenance organization operating under
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   Chapter 843;
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               (4) an approved nonprofit health corporation that
23
   holds a certificate of authority under Chapter 844;
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Chapter 884;

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a certificate of authority under Chapter 846;

(5) a multiple employer welfare arrangement that holds

(6) a stipulated premium company operating under

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(7) a fraternal benefit society operating under
   Chapter 885;
 3
               (8) a Lloyd's plan operating under Chapter 941; or
               (9)
                  an exchange operating under Chapter 942.
5
         (b) Notwithstanding any other law, this subchapter applies
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   to:
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               (1) a small employer health benefit plan subject to
   Chapter 1501, including coverage provided through a health group
8
   cooperative under Subchapter B of that chapter;
               (2) a standard health benefit plan issued under
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   Chapter 1507;
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               (3) health benefits provided by or through a church
   benefits board under Subchapter I, Chapter 22, Business
13
   Organizations Code;
14
15
               (4) a regional or local health care program operating
   under Section 75.104, Health and Safety Code; and
               (5) a self-funded health benefit plan sponsored by a
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   professional employer organization under Chapter 91, Labor Code.
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         (c) This subchapter does not apply to an issuer or provider
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   of health benefits under or a pharmacy benefit manager
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   administering pharmacy benefits under a workers' compensation
   insurance policy or other form of providing medical benefits under
22
   Title 5, Labor Code.
23
         Sec. 1369.603. CERTAIN LIMITATIONS
24
                                                    RELATED TO
   CLINICIAN-ADMINISTERED DRUGS PROHIBITED. (a) A health benefit plan
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   issuer or pharmacy benefit manager may not, for a patient with a
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   cancer or cancer-related diagnosis:
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- (1) require a clinician-administered drug to be
  dispensed by a pharmacy, including by an affiliated provider; or

  (2) require that a clinician-administered drug or the
  administration of a clinician-administered drug be covered as a
- 4 administration of a clinician-administered drug be covered as a pharmacy benefit rather than a medical benefit.
- 6 (b) Nothing in this section may be construed to:
- 7 (1) authorize a person to administer a drug when
- 8 otherwise prohibited under the laws of this state or federal law; or
- 9 (2) modify drug administration requirements under the
- 10 laws of this state, including any requirements related to
- 11 delegation and supervision of drug administration.
- SECTION 2. Sections 1369.555(a) and (b), Insurance Code, as
- 13 added by this Act, apply only to a health benefit plan delivered,
- 14 issued for delivery, or renewed on or after the effective date of
- 15 this Act.
- SECTION 3. Subchapter M, Chapter 1369, Insurance Code, as
- 17 added by this Act, applies only to a health benefit plan that is
- 18 delivered, issued for delivery, or renewed on or after January 1,
- 19 2022.
- SECTION 4. This Act takes effect September 1, 2021.



FLOOR AMENDMENT NO.\_\_\_\_

BY: C. Odmil

Amend C.S.H.B. No. 1919 (senate committee report) in SECTION

- 2 1 of the bill, in added Section 1369.552(6), Insurance Code (page 1,
- 3 line 51), by striking "primary care".

ADOPTED

MAY 24 2021

FLOOR AMENDMENT NO.

Secretary of the Senate

BY:

Schwid

- 1 Amend C.S.H.B. No. 1919 (senate committee report) as
- 2 follows:
- 3 (1) In the recital to SECTION 1 of the bill adding
- 4 Subchapters L and M, Chapter 1369, Insurance Code (page 1, line 27),
- 5 strike "Subchapters L and M" and substitute "Subchapter L".
- 6 (2) In SECTION 1 of the bill, strike added Subchapter M,
- 7 Chapter 1369, Insurance Code (page 2, line 46, through page 3, line
- 8 61).
- 9 (3) Strike SECTION 3 of the bill adding transition language
- 10 for Subchapter M, Chapter 1369, Insurance Code (page 3, lines 66
- 11 through 69), and renumber subsequent SECTIONS of the bill
- 12 accordingly.

#### FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

#### May 27, 2021

TO: Honorable Dade Phelan, Speaker of the House, House of Representatives

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB1919 by Harris (Relating to certain prohibited practices for certain health benefit plan issuers and certain required and prohibited practices for certain pharmacy benefit managers.), As Passed 2nd House

#### No significant fiscal implication to the State is anticipated.

The bill would amend the Insurance Code relating to prohibited practices for certain health benefit plan issuers and certain required and prohibited practices for certain pharmacy benefit managers. It is assumed that the duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

#### **Local Government Impact**

The fiscal implications of the bill cannot be determined at this time.

Source Agencies: 323 Teacher Retirement System, 327 Employees Retirement System, 454 Department of Insurance,

529 Hlth & Human Svcs Comm, 710 Texas A&M Univ System Admin, 720 UT Sys Admin

LBB Staff: JMc, LBO, MB, MPUK, AKI, AAL

#### FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

May 21, 2021

TO: Honorable Lois W. Kolkhorst, Chair, Senate Committee on Health & Human Services

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB1919 by Harris (Relating to certain prohibited practices for certain health benefit plan issuers and certain required and prohibited practices for certain pharmacy benefit managers.), Committee Report 2nd House, Substituted

#### No significant fiscal implication to the State is anticipated.

The bill would amend the Insurance Code relating to prohibited practices for certain health benefit plan issuers and certain required and prohibited practices for certain pharmacy benefit managers. It is assumed that the duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

#### **Local Government Impact**

The fiscal implications of the bill cannot be determined at this time.

Source Agencies: 323 Teacher Retirement System, 327 Employees Retirement System, 454 Department of Insurance,

529 Hlth & Human Svcs Comm, 710 Texas A&M Univ System Admin, 720 UT Sys Admin

LBB Staff: JMc, AKI, MB, MPUK, AAL

#### FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

#### May 18, 2021

TO: Honorable Lois W. Kolkhorst, Chair, Senate Committee on Health & Human Services

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB1919 by Harris (Relating to certain prohibited practices for certain health benefit plan issuers and certain required and prohibited practices for certain pharmacy benefit managers, including pharmacy benefit managers participating in the Medicaid and child health plan programs.), As Engrossed

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB1919, As Engrossed : an impact of \$0 through the biennium ending August 31, 2023.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

#### General Revenue-Related Funds, Five- Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds	
2022	\$0	
2023	\$0	
2024	\$0	
2025	\$0	
2026	\$0	

#### All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from School Employees UGIP Trust Fund 855	Probable Savings/(Cost) from RETIRED SCHOOL EMP GROUP INSURANCE 989
2022	(\$27,540,000)	(\$6,810,000)
2023	(\$28,360,000)	(\$7,020,000)
2024	(\$29,210,000)	(\$7,230,000)
2025	(\$30,090,000)	(\$7,440,000)
2026	(\$30,990,000)	(\$7,670,000)

#### **Fiscal Analysis**

The bill would amend the Insurance Code relating to prohibited practices for certain health benefit plan issuers and certain required and prohibited practices for certain pharmacy benefit managers (PBMs). The bill would require PBMs that contract with a managed care organization that contracts to provide pharmacy benefits under Medicaid or the child health plan program to have a fee schedule that applies to each pharmacy with which the PBM contracts, and prohibits PBMs from directing a patient to use an affiliated pharmacist or pharmacy.

#### Methodology

Based on information provided by the University of Texas System and the Texas A&M System, the bill would have a cost of \$24.9 million and \$6.9 million respectively in fiscal year 2023 across their component institutions. This cost would be shared by employers and members. It is assumed that these costs would be primarily in Institutional funds. These funds are not appropriated to the institution in the General Appropriations Act (and not reflected in the table above).

Based on information provided by the Teacher Retirement System, the bill would result in costs of \$27.5 million in fiscal year 2022 and \$28.4 million in fiscal year 2023 to the School Employees Uniform Group Insurance Program Trust Fund (Fund 855 - TRS ActiveCare) and \$6.8 million in 2022 and \$7.0 million in 2023 to the Retired School Employee Group Insurance (Fund 989 - TRS-Care).

Based on information provided by the Health and Human Services Commission, there would be no significant fiscal impact to the agency from the bill.

#### Local Government Impact

The fiscal implications of the bill cannot be determined at this time.

Source Agencies: 323 Teacher Retirement System, 327 Employees Retirement System, 454 Department of Insurance,

529 Hlth & Human Svcs Comm, 710 Texas A&M Univ System Admin, 720 UT Sys Admin

LBB Staff: JMc, AKI, MB, MPUK, AAL

#### FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

#### **April 9, 2021**

TO: Honorable Tom Oliverson, Chair, House Committee on Insurance

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB1919 by Harris (relating to certain prohibited practices for certain health benefit plan issuers and pharmacy benefit managers.), Committee Report 1st House, Substituted

#### No significant fiscal implication to the State is anticipated.

The bill would amend the Insurance Code relating to prohibited practices for certain health benefit plan issuers and pharmacy benefit managers. Based on information provided by the Texas Department of Insurance, this analysis assumes that the duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

Texas A&M University System Administration has indicated costs related to limitations on retail pharmacy network operations and elimination of no-cost and mail-order discount programs, though this analysis assumes those costs could be absorbed by the institution.

#### **Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 327 Employees Retirement System, 454 Department of Insurance, 529 Hlth & Human Svcs Comm,

710 Texas A&M Univ System Admin, 720 UT Sys Admin

LBB Staff: JMc, AAL, MB, MPUK

#### FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

March 22, 2021

TO: Honorable Tom Oliverson, Chair, House Committee on Insurance

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB1919 by Harris (Relating to prohibited practices for certain health benefit plan issuers and pharmacy benefit managers.), As Introduced

#### No significant fiscal implication to the State is anticipated.

The bill would amend the Insurance Code relating to prohibited practices for certain health benefit plan issuers and pharmacy benefit managers. Based on information provided by the Texas Department of Insurance, this analysis assumes that the duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

Texas A&M University System Administration has indicated costs related to limitations on retail pharmacy network operations and elimination of no-cost and mail-order discount programs, though this analysis assumes those costs could be absorbed by the institution.

#### **Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 327 Employees Retirement System, 454 Department of Insurance, 529 Hlth & Human Svcs Comm,

710 Texas A&M Univ System Admin, 720 UT Sys Admin

LBB Staff: JMc, AAL, MB, MPUK