BILL ANALYSIS

Senate Research Center

S.B. 1236
By: Hughes
Health & Human Services
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The current Texas Insurance Code regulates the activity of pharmacy benefit managers (PBMs) that operate in Texas. Through market consolidation, just a few PBMs control the vast majority of prescription drug reimbursements in the U.S., and many contend that PBMs have used their market power to force pharmacies to accept "take-it-or-leave-it" contracts with predatory terms.

S.B. 1236 would amend Chapter 1369, Insurance Code, to provide reasonable contract protections for pharmacies and pharmacists in their relationships with PBMs. It would also amend existing statutes to clarify language regarding PBM audits and provide transparency in the applicability of Texas laws to particular contracts and benefit enrollees.

(Original Author's/Sponsor's Statement of Intent)

S.B. 1236 amends current law relating to the relationship between pharmacists or pharmacies and health benefit plan issuers or pharmacy benefit managers.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1369.153, Insurance Code, by adding Subsection (e) to provide that a group number on an identification card provided to an enrollee in a health benefit plan to which Subchapter D (Pharmacy Benefit Cards) applies is authorized to be assigned only to enrollees in a health benefit plan to which this subchapter applies.

SECTION 2. Amends the heading to Section 1369.259, Insurance Code, to read as follows:

> Sec. 1369.259. LIMITATIONS ON PAYMENT ADJUSTMENTS AND RECOUPMENT; USE OF EXTRAPOLATION PROHIBITED.

SECTION 3. Amends Section 1369.259, Insurance Code, by adding Subsections (a-1), (e), and (f), as follows:

> (a-1) Prohibits a health benefit plan issuer or pharmacy benefit manager, subject to Subsections (e) and (f), as the result of an audit, from denying or reducing a claim payment made to a pharmacist or pharmacy after adjudication of the claim.
>
> (e) Authorizes a health benefit plan issuer or pharmacy benefit manager to recoup from a pharmacist or pharmacy the cost of a prescription drug and the dispensing fee for the drug if the original claim was submitted fraudulently, the original claim was incorrect because the pharmacist or pharmacy had already been paid for the pharmacist service, or the pharmacist or pharmacy made a substantive nonclerical or non-recordkeeping error that led to the patient receiving the wrong prescription drug or dosage.

(f) Provides that a health benefit plan issuer or pharmacy benefit manager is authorized to recoup only the dispensing fee from a pharmacist or pharmacy if the pharmacist or pharmacy made a clerical error that led to an overpayment.

SECTION 4. Amends Subchapter M, Chapter 1369, Insurance Code, by adding Sections 1369.6021, 1369.6022, 1369.6023, 1369.6024, 1369.6025, 1369.6026, and 1369.6027, as follows:

Sec. 1369.6021. ONLINE ACCESS TO PHARMACY BENEFIT NETWORK CONTRACT. Requires a health benefit plan issuer or pharmacy benefit manager to make available to any pharmacist or pharmacy in the issuer's or manager's pharmacy benefit network access to a secure, online portal through which the pharmacist or pharmacy is authorized to access all pharmacy benefit network contracts between the health benefit plan issuer or pharmacy benefit manager and the pharmacist or pharmacy, including any contract addendums.

Sec. 1369.6022. PHARMACY BENEFIT NETWORK CONTRACT: ADVERSE MATERIAL CHANGES. (a) Defines "adverse material change."

(b) Provides that a health benefit plan issuer or pharmacy benefit manager is authorized to make an adverse material change to a pharmacy benefit network contract during the term of the contract only with the mutual agreement of the parties. Provides that a provision in the contract that allows a health benefit plan issuer or pharmacy benefit manager to unilaterally make an adverse material change during the term of the contract is void and unenforceable.

(c) Prohibits an adverse material change to a pharmacy benefit network contract from going into effect until the 120th day after the date the pharmacist or pharmacy affirmatively agrees to the adverse material change in writing.

(d) Requires that an adverse material change to a pharmacy benefit network contract proposed by a health benefit plan issuer or pharmacy benefit manager include notice that clearly and conspicuously states that a pharmacist or pharmacy is authorized to choose to not agree to the adverse material change and that the decision to not agree to the adverse material change does not affect the terms of the pharmacist's or pharmacy's existing contract with the health benefit plan issuer or pharmacy benefit manager, or the pharmacist's or pharmacy's participation in another pharmacy benefit network.

(e) Provides that a pharmacist's or pharmacy's decision to not agree to an adverse material change to a pharmacy benefit network contract does not affect the terms of the pharmacist's or pharmacy's existing contract or the pharmacist's or pharmacy's participation in another pharmacy benefit network.

(f) Provides that a health benefit plan issuer's or pharmacy benefit manager's failure to include the notice described by Subsection (d) with the proposed adverse material change makes an otherwise agreed-to adverse material change void and unenforceable.

(g) Provides that this section does not apply to certain pharmacy benefit network contracts or a proposed modification or addendum to a pharmacy benefit network contract that is required by state or federal law or rule.

Sec. 1369.6023. PHARMACY BENEFIT NETWORK CONTRACT: OTHER MODIFICATIONS AND ADDENDUMS. (a) Requires a health benefit plan issuer or pharmacy benefit manager, not later than the 90th day before the date a proposed modification or addendum to a pharmacy benefit network contract, other than an adverse material change as defined by Section 1369.6022, is to take effect, to take certain actions.

(b) Authorizes the health benefit plan issuer or pharmacy benefit manager, if a pharmacist or pharmacy does not respond before the 31st day after the date the pharmacist or pharmacy receives notice of a proposed modification or addendum under Subsection (a), to consider the proposed modification or addendum approved by the pharmacist or pharmacy and the modification or addendum takes effect on the date described by Subsection (a).

(c) Prohibits a pharmacy network contract from incorporating by a reference a document not included in a contract or contract attachment, including a provider manual described by Section 1369.6025. Requires that all financial terms, including reimbursement rates and methodology, be set forth in the contract.

(d) Provides that this section does not apply to certain pharmacy benefit network contracts or a proposed modification or addendum to a pharmacy benefit network contract that is required by state or federal law or rule.

Sec. 1369.6024. PHARMACY BENEFIT NETWORK CONTRACT DISCLOSURE. Requires that a pharmacy benefit network contract state that the contract is subject to Chapter 1369 (Benefits Related to Prescription Drugs and Devices and Related Services) and any rules adopted by the commissioner of insurance under this chapter.

Sec. 1369.6025. PROVIDER MANUAL DISCLOSURE. Requires a health benefit plan issuer or pharmacy benefit manager to make a provider manual readily available on the online portal described by Section 1369.6021 and post a modification or addendum to the provider manual in the same manner as a contract modification or addendum under Section 1369.6023(a).

Sec. 1369.6026. PHARMACY BENEFIT NETWORK CONTRACT FEE LIMITATIONS. Prohibits a health benefit plan issuer or pharmacy benefit manager from charging a fee, including an application or participation fee, before providing a pharmacist or pharmacy with the full proposed pharmacy benefit network contract, including any financial terms applicable to the contract and corresponding pharmacy benefit network.

Sec. 1369.6027. PHARMACY BENEFIT NETWORK PARTICIPATION REQUIREMENTS PROHIBITED. Prohibits a health benefit plan issuer or pharmacy benefit plan manager from requiring a pharmacist or pharmacy to participate in a pharmacy benefit network, conditioning a pharmacist's or pharmacy's participation in a pharmacy benefit network on participation in any other pharmacy benefit network, or penalizing a pharmacist or pharmacy for refusing to participate in a pharmacy benefit network.

SECTION 5. Amends Section 1369.605, Insurance Code, as follows:

Sec. 1369.605. NETWORK CONTRACT FEE SCHEDULE. Requires that a pharmacy benefit network contract include a fee schedule, rather than specify or reference a separate fee schedule. Deletes existing text requiring that the fee schedule, unless otherwise available in the contract, be provided electronically in an easily accessible and complete spreadsheet format and, on request, in writing to each contracted pharmacist and pharmacy.

SECTION 6. Repealer: Section 1369.259(d) (relating to prohibiting the inclusion of a dispensing fee amount in the calculation of an overpayment with certain exceptions), Insurance Code.

SECTION 7. (a) Makes application of Section 1369.153, Insurance Code, as amended by this Act, prospective to January 1, 2026.

(b) Makes application of Chapter 1369, Insurance Code, as amended by this Act, prospective.

SECTION 8. Effective date: September 1, 2025.