

BILL ANALYSIS

Senate Research Center
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S.B. 1236
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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.

As proposed, 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

Rulemaking authority is expressly granted to the commissioner of insurance in SECTION 1 (Section 1369.153, Insurance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1369.153, Insurance Code, by adding Subsection (e), as follows:

(e) Requires the commissioner of insurance (commissioner) by rule to require a health benefit plan that provides pharmacy benefits to enrollees to include on the front of the identification card of each enrollee a unique identifier that enables a pharmacist or pharmacy to determine when submitting a claim that the enrollee's health benefit plan or pharmacy benefit plan is subject to regulation by the Texas Department of Insurance. Authorizes the commissioner, for purposes of this subsection, to require a unique bank identification number, processor control number, or group number.

SECTION 2. Amends Section 1369.252, Insurance Code, as follows:

Sec. 1369.252. EXCEPTIONS TO APPLICABILITY OF SUBCHAPTER. Deletes existing text providing that Subchapter F (Audits of Pharmacists and Pharmacies) does not apply to an issuer or provider of health benefits under or a pharmacy benefit manager administering pharmacy benefits under a self-funded health benefit plan as defined by the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.). Makes nonsubstantive changes.

SECTION 3. 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 4. Amends Section 1369.259, Insurance Code, by adding Subsections (a-1) and (e), as follows:

(a-1) Prohibits a health benefit plan issuer or pharmacy benefit manager, as the result of an audit, from denying or reducing a claim payment made to a pharmacist or pharmacy after adjudication of the claim unless the original claim was submitted fraudulently, the original claim payment was incorrect because the pharmacist or pharmacy had already been paid for the pharmacist service, or the pharmacist or pharmacy made a substantive non-clerical or non-recordkeeping error that led to the patient receiving the wrong prescription drug or dosage.

(e) Provides that, except for a claim described by Subsection (a-1), a health benefit plan issuer or pharmacy benefit manager is authorized only to recoup the dispensing fee paid by the health benefit plan issuer or pharmacy benefit manager to the pharmacist or pharmacy associated with the audit claim and is prohibited from recouping from the pharmacist or pharmacy the cost of the drug or any other amount related to the claim.

SECTION 5. Amends Subchapter M, Chapter 1369, Insurance Code, by adding Sections 1369.6021, 1369.6022, 1369.6023, 1369.6024, and 1369.6025, 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 MODIFICATIONS AND ADDENDUMS.** (a) Requires a pharmacist or pharmacy to have an opportunity to refuse a proposed modification or addendum to a pharmacy benefit network contract. Prohibits a proposed modification or addendum from taking effect without the signed approval of the pharmacist or pharmacy.

(b) Requires a health benefit plan issuer or pharmacy benefit manager to, not later than the 90th day before the date a proposed modification or addendum to a pharmacy network contract is to take effect, post the proposed modification or addendum to the online portal described by Section 1369.6021 and provide to the pharmacist or pharmacy notice of the proposed modification or addendum by e-mail, including certain information.

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

Sec. 1369.6023. **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 under this chapter.

Sec. 1369.6024. **PHARMACY BENEFIT NETWORK CONTRACT FEE LIMITATIONS.** (a) 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.

(b) Prohibits a health benefit plan issuer or pharmacy manager from charging a pharmacist or pharmacy already participating in the pharmacy benefit network a fee related to re-credentialing or re-enrollment or a similar fee.

Sec. 1369.6025. 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 6. 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 7. 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 8. (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 9. Effective date: September 1, 2025.