

By: Darby, Craddick, Harris, Harless, Rose,
et al.

H.B. No. 3265

Substitute the following for H.B. No. 3265:

By: Dean

C.S.H.B. No. 3265

A BILL TO BE ENTITLED

AN ACT

relating to discriminatory practices by a health benefit plan issuer, pharmacy benefit manager, and third-party payor and certain prescription drug manufacturers, distributors, and related persons with respect to certain entities participating in a federal drug discount program; providing a civil penalty.

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

SECTION 1. Subchapter N, Chapter 431, Health and Safety Code, is amended by adding Section 431.416 to read as follows:

Sec. 431.416. DISCRIMINATION WITH RESPECT TO FEDERAL 340B DRUG DISCOUNT PROGRAM PROHIBITED. (a) In this section:

(1) "340B drug" and "covered entity" have the meanings assigned by Section 1369.701, Insurance Code.

(2) "Package" has the meaning assigned by 21 U.S.C. Section 360eee(11)(A).

(3) "Pharmacist" and "pharmacy" have the meanings assigned by Section 551.003, Occupations Code.

(b) Except as provided by Subsections (c) and (d), a manufacturer, repackager, logistics provider, third-party logistics provider, wholesale distributor, or agent of a prescription drug may not, either directly or indirectly:

(1) discriminate against a covered entity, a pharmacist or pharmacy that is under contract with the covered entity, or another entity that is authorized under the contract to

1 receive the drug on behalf of the covered entity;

2 (2) deny, restrict, prohibit, or otherwise limit the
3 acquisition of a 340B drug by, or delivery of the drug to, a covered
4 entity, a pharmacist or pharmacy that is under contract with the
5 covered entity, or another entity that is authorized under the
6 contract to receive the drug on behalf of the covered entity; or

7 (3) require a covered entity, a pharmacist or pharmacy
8 that is under contract with the covered entity, or another entity
9 that is authorized under the contract to receive a 340B drug on
10 behalf of the covered entity to submit any claim or utilization data
11 as a condition for the acquisition of a 340B drug by, or delivery of
12 a 340B drug to, the covered entity, pharmacist or pharmacy under
13 contract with the covered entity, or other entity authorized to
14 receive the drug, as applicable.

15 (c) This section does not apply to:

16 (1) the receipt of a 340B drug that is prohibited by
17 the United States Food and Drug Administration;

18 (2) the submission of a claim or utilization data that
19 is required by the United States Department of Health and Human
20 Services or the department; or

21 (3) the Texas HIV medication program established under
22 Section [85.061](#).

23 (d) Subsection (b)(3) does not apply to a pharmaceutical
24 manufacturer audit that:

25 (1) pertains directly to a covered entity's compliance
26 with the requirements of 42 U.S.C. Section 256b(a)(5)(A)(i) or
27 (a)(5)(B); and

1 (2) is conducted in accordance with procedures
2 established by the United States Department of Health and Human
3 Services.

4 (e) A person who has reasonable cause to believe another
5 person has violated this section may submit a complaint to the
6 department. The department may investigate the complaint. If the
7 department finds that the person subject to the complaint committed
8 a violation of this section, the department:

9 (1) shall refer the complaint to the attorney general;
10 and

11 (2) may, in accordance with Section [431.414](#), suspend
12 or revoke a license issued under this subchapter and held by the
13 person subject to the complaint.

14 (f) A person who violates this section commits a false,
15 misleading, or deceptive act or practice under Section [17.46](#),
16 Business & Commerce Code, except that a civil penalty may be
17 assessed in an amount not greater than \$50,000 for each violation. A
18 person commits a separate violation for each package of 340B drugs
19 that is the subject of a violation of this section.

20 (g) The executive commissioner shall adopt rules necessary
21 to implement this section.

22 (h) This section does not create a private cause of action
23 against a person who violates this section.

24 (i) Nothing in this section may be construed or applied to
25 be:

26 (1) less restrictive than any federal law as to any
27 person regulated by this section; or

1 (2) in conflict with:

2 (A) federal law or a related regulation; or

3 (B) any law of this state that is compatible with
4 applicable federal law.

5 SECTION 2. Chapter [1369](#), Insurance Code, is amended by
6 adding Subchapter O to read as follows:

7 SUBCHAPTER O. PROHIBITION ON DISCRIMINATION WITH RESPECT TO
8 FEDERAL 340B DRUG DISCOUNT PROGRAM

9 Sec. 1369.701. DEFINITIONS. In this subchapter:

10 (1) "340B drug" means a covered outpatient drug within
11 the meaning of 42 U.S.C. Section 256b that has been subject to any
12 offer for reduced prices by a manufacturer under the 340B program
13 and is purchased, or is intended to be purchased, by a covered
14 entity.

15 (2) "340B program" means the federal drug discount
16 program established by Section 340B, Public Health Service Act (42
17 U.S.C. Section 256b).

18 (3) "Covered entity" has the meaning assigned by 42
19 U.S.C. Section 256b(a)(4).

20 (4) "Manufacturer" has the meaning assigned by Section
21 [431.401](#), Health and Safety Code.

22 (5) "Non-covered entity" means an entity that is not a
23 covered entity.

24 (6) "Pharmacy benefit manager" has the meaning
25 assigned by Section [4151.151](#).

26 (7) "Third-party payor" means any person, other than a
27 pharmacy benefit manager, health benefit plan issuer, patient, or

individual paying for a patient's drugs on the patient's behalf,
that makes payment for drugs dispensed by a pharmacist or pharmacy
or administered by a health care professional.

Sec. 1369.702. APPLICABILITY OF SUBCHAPTER. (a) This
subchapter applies only to a health benefit plan that provides
benefits for medical or surgical expenses incurred as a result of a
health condition, accident, or sickness, including an individual,
group, blanket, or franchise insurance policy or insurance
agreement, a group hospital service contract, or an individual or
group evidence of coverage or similar coverage document that is
issued by:

- (1) an insurance company;
- (2) a group hospital service corporation operating
under Chapter 842;
- (3) a health maintenance organization operating under
Chapter 843;
- (4) an approved nonprofit health corporation that
holds a certificate of authority under Chapter 844;
- (5) a multiple employer welfare arrangement that holds
a certificate of authority under Chapter 846;
- (6) a stipulated premium company operating under
Chapter 884;
- (7) a fraternal benefit society operating under
Chapter 885;
- (8) a Lloyd's plan operating under Chapter 941; or
- (9) an exchange operating under Chapter 942.

(b) Notwithstanding any other law, this subchapter applies

1 to:

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

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

7 (3) a basic coverage plan under Chapter 1551;

8 (4) a basic plan under Chapter 1575;

9 (5) a primary care coverage plan under Chapter 1579;

10 (6) a plan providing basic coverage under Chapter
11 1601;

12 (7) alternative health benefit coverage offered by a
13 subsidiary of the Texas Mutual Insurance Company under Subchapter
14 M, Chapter 2054;

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

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

19 (10) a self-funded health benefit plan sponsored by a
20 professional employer organization under Chapter 91, Labor Code;

21 (11) county employee group health benefits provided
22 under Chapter 157, Local Government Code; and

23 (12) health and accident coverage provided by a risk
24 pool created under Chapter 172, Local Government Code.

25 Sec. 1369.703. EXCEPTIONS. This subchapter does not apply
26 to:

27 (1) the state Medicaid program, including the Medicaid

managed care program operated under Chapter 540, Government Code;
or

(2) the Texas HIV medication program established under
Section 85.061, Health and Safety Code.

Sec. 1369.704. PROHIBITION ON DISCRIMINATORY ACTIONS. (a)
Except as provided by Subsection (b), a health benefit plan issuer,
pharmacy benefit manager, or third-party payor may not:

(1) reimburse a covered entity or a pharmacist or
pharmacy that is under contract with the entity for a prescription
drug at a rate lower than the rate paid to a non-covered entity for
the same drug;

(2) require a covered entity or a pharmacy or
pharmacist under contract with the entity to include with a claim
for a prescription drug dispensed by the entity an identification,
billing modifier, attestation, or other indication that the drug is
a 340B drug in order to be processed or resubmitted;

(3) impose a term on a covered entity that differs from
the terms applied to non-covered entities on the basis that the
entity is a covered entity, including:

(A) a fee, chargeback, or other adjustment that
is not placed on non-covered entities; or

(B) a restriction or requirement regarding
participation in a health benefit plan issuer, pharmacy benefit
manager, or third-party payor network, including a requirement that
a covered entity enter into a contract with a specific pharmacy or
pharmacist; or

(4) discriminate against, create a restriction

1 applicable to, or impose an additional charge on a patient who
2 chooses to receive a prescription drug from a covered entity.

3 (b) Subsection (a)(2) does not apply to a reporting
4 requirement imposed by the United States Department of Health and
5 Human Services or the Department of State Health Services.

6 SECTION 3. (a) Section 431.416, Health and Safety Code, as
7 added by this Act, applies only to a prescription drug manufactured
8 on or after the effective date of this Act.

9 (b) Subchapter O, Chapter 1369, Insurance Code, as added by
10 this Act, applies only to a health benefit plan delivered, issued
11 for delivery, or renewed on or after January 1, 2026.

12 SECTION 4. It is the intent of the legislature that every
13 provision, section, subsection, sentence, clause, phrase, or word
14 in this Act, and every application of the provisions in this Act to
15 every person, group of persons, or circumstances, is severable from
16 each other. If any application of any provision in this Act to any
17 person, group of persons, or circumstances is found by a court to be
18 invalid for any reason, the remaining applications of that
19 provision to all other persons and circumstances shall be severed
20 and may not be affected.

21 SECTION 5. This Act takes effect September 1, 2025.