

By: Darby

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 Subsection (c), 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; or

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.

21 (d) A person who has reasonable cause to believe another
22 person has violated this section may submit a complaint to the
23 department. The department may investigate the complaint. If the
24 department finds that the person subject to the complaint committed
25 a violation of this section, the department:

26 (1) shall refer the complaint to the attorney general;

27 and

1 (2) may, in accordance with Section 431.414, suspend
2 or revoke a license issued under this subchapter and held by the
3 person subject to the complaint.

4 (e) A person who violates this section commits a false,
5 misleading, or deceptive act or practice under Section 17.46,
6 Business & Commerce Code, except that a civil penalty may be
7 assessed in an amount not greater than \$50,000 for each violation. A
8 person commits a separate violation for each package of 340B drugs
9 that is the subject of a violation of this section.

10 (f) The executive commissioner shall adopt rules necessary
11 to implement this section.

12 (g) This section does not create a private cause of action
13 against a person who violates this section.

14 (h) Nothing in this section may be construed or applied to
15 be:

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

18 (2) in conflict with:

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

20 (B) any law of this state that is compatible with
21 applicable federal law.

22 SECTION 2. Chapter 1369, Insurance Code, is amended by
23 adding Subchapter O to read as follows:

24 SUBCHAPTER O. PROHIBITION ON DISCRIMINATION WITH RESPECT TO
25 FEDERAL 340B DRUG DISCOUNT PROGRAM

26 Sec. 1369.701. DEFINITIONS. In this subchapter:

27 (1) "340B drug" means a covered outpatient drug within

1 the meaning of 42 U.S.C. Section 256b that has been subject to any
2 offer for reduced prices by a manufacturer under the 340B program
3 and is purchased, or is intended to be purchased, by a covered
4 entity.

5 (2) "340B program" means the federal drug discount
6 program established by Section 340B, Public Health Service Act (42
7 U.S.C. Section 256b).

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

10 (4) "Manufacturer" has the meaning assigned by Section
11 431.401, Health and Safety Code.

12 (5) "Non-covered entity" means an entity that is not a
13 covered entity.

14 (6) "Pharmacy benefit manager" has the meaning
15 assigned by Section 4151.151.

16 (7) "Third-party payor" means any person, other than a
17 pharmacy benefit manager, health benefit plan issuer, patient, or
18 individual paying for a patient's drugs on the patient's behalf,
19 that makes payment for drugs dispensed by a pharmacist or pharmacy
20 or administered by a health care professional.

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

1 issued by:

2 (1) an insurance company;

3 (2) a group hospital service corporation operating
4 under Chapter 842;

5 (3) a health maintenance organization operating under
6 Chapter 843;

7 (4) an approved nonprofit health corporation that
8 holds a certificate of authority under Chapter 844;

9 (5) a multiple employer welfare arrangement that holds
10 a certificate of authority under Chapter 846;

11 (6) a stipulated premium company operating under
12 Chapter 884;

13 (7) a fraternal benefit society operating under
14 Chapter 885;

15 (8) a Lloyd's plan operating under Chapter 941; or

16 (9) an exchange operating under Chapter 942.

17 (b) Notwithstanding any other law, this subchapter applies
18 to:

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

22 (2) a standard health benefit plan issued under
23 Chapter 1507;

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

25 (4) a basic plan under Chapter 1575;

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

27 (6) a plan providing basic coverage under Chapter

1 1601;

2 (7) nonprofit agricultural organization health
3 benefits offered by a nonprofit agricultural organization under
4 Chapter 1682;

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

8 (9) health benefits provided by or through a church
9 benefits board under Subchapter I, Chapter 22, Business
10 Organizations Code;

11 (10) group health coverage made available by a school
12 district in accordance with Section 22.004, Education Code;

13 (11) the state Medicaid program, including the
14 Medicaid managed care program operated under Chapter 540,
15 Government Code;

16 (12) the child health plan program under Chapter 62,
17 Health and Safety Code;

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

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

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

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

26 Sec. 1369.703. PROHIBITION ON DISCRIMINATORY ACTIONS. A
27 health benefit plan issuer, pharmacy benefit manager, or

1 third-party payor may not:

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

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

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

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

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

21 (4) discriminate against, create a restriction
22 applicable to, or impose an additional charge on a patient who
23 chooses to receive a prescription drug from a covered entity.

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

27 (b) Subchapter O, Chapter 1369, Insurance Code, as added by

1 this Act, applies only to a health benefit plan delivered, issued
2 for delivery, or renewed on or after January 1, 2026.

3 SECTION 4. It is the intent of the legislature that every
4 provision, section, subsection, sentence, clause, phrase, or word
5 in this Act, and every application of the provisions in this Act to
6 every person, group of persons, or circumstances, is severable from
7 each other. If any application of any provision in this Act to any
8 person, group of persons, or circumstances is found by a court to be
9 invalid for any reason, the remaining applications of that
10 provision to all other persons and circumstances shall be severed
11 and may not be affected.

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