

By: Hefner

H.B. No. 3317

Substitute the following for H.B. No. 3317:

By: Dean

C.S.H.B. No. 3317

A BILL TO BE ENTITLED

AN ACT

relating to the relationship between pharmacists or pharmacies and health benefit plan issuers or pharmacy benefit managers.

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

SECTION 1. Section 1369.153, Insurance Code, is amended by adding Subsection (e) to read as follows:

(e) A group number on an identification card provided to an enrollee in a health benefit plan to which this subchapter applies may be assigned only to enrollees in a health benefit plan to which this subchapter applies.

SECTION 2. The heading to Section 1369.259, Insurance Code, is amended to read as follows:

Sec. 1369.259. LIMITATIONS ON PAYMENT ADJUSTMENTS AND
[CALCULATION OF] RECOUPMENT; USE OF EXTRAPOLATION PROHIBITED.

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

(a-1) Subject to Subsections (e) and (f), a health benefit plan issuer or pharmacy benefit manager may not, as the result of an audit, deny or reduce a claim payment made to a pharmacist or pharmacy after adjudication of the claim.

(e) A health benefit plan issuer or pharmacy benefit manager may recoup from a pharmacist or pharmacy the cost of a prescription drug and the dispensing fee for the drug if:

(1) the original claim was submitted fraudulently;

1 (2) the original claim payment was incorrect because
2 the pharmacist or pharmacy had already been paid for the pharmacist
3 service; or

4 (3) the pharmacist or pharmacy made a substantive
5 nonclerical or non-recordkeeping error that led to the patient
6 receiving the wrong prescription drug or dosage.

7 (f) A health benefit plan issuer or pharmacy benefit manager
8 may recoup only the dispensing fee from a pharmacist or pharmacy if
9 the pharmacist or pharmacy made a clerical error that led to an
10 overpayment.

11 SECTION 4. Subchapter M, Chapter 1369, Insurance Code, is
12 amended by adding Sections 1369.6021, 1369.6022, 1369.6023,
13 1369.6024, 1369.6025, 1369.6026, and 1369.6027 to read as follows:

14 Sec. 1369.6021. ONLINE ACCESS TO PHARMACY BENEFIT NETWORK
15 CONTRACT. A health benefit plan issuer or pharmacy benefit manager
16 shall make available to any pharmacist or pharmacy in the issuer's
17 or manager's pharmacy benefit network access to a secure, online
18 portal through which the pharmacist or pharmacy may access all
19 pharmacy benefit network contracts between the health benefit plan
20 issuer or pharmacy benefit manager and the pharmacist or pharmacy,
21 including any contract addendums.

22 Sec. 1369.6022. PHARMACY BENEFIT NETWORK CONTRACT: ADVERSE
23 MATERIAL CHANGES. (a) In this section, "adverse material change"
24 means a modification or addendum to a pharmacy benefit network
25 contract that would decrease a pharmacist's or pharmacy's payment
26 or compensation, change the pharmacist's or pharmacy's tier to a
27 less preferred tier, or change the administrative procedures in a

way that may reasonably be expected to increase the pharmacist's or pharmacy's administrative expenses or decrease the pharmacist's or pharmacy's payment or compensation. The term does not include:

(1) a decrease in payment or compensation resulting solely from a change in a published governmental fee schedule on which the payment or compensation is based if the applicability of the schedule is clearly identified in the contract;

(2) a decrease in payment or compensation that was anticipated under the terms of the contract, if the amount and date of applicability of the decrease is clearly identified in the contract;

(3) an administrative change that may increase the pharmacist's or pharmacy's administrative expenses, the specific applicability of which is clearly identified in the contract;

(4) a change that is required by federal or state law;

(5) a termination for cause; or

(6) a termination without cause at the end of the term of the contract.

(b) A health benefit plan issuer or pharmacy benefit manager may 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. 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) An adverse material change to a pharmacy benefit network contract may not go into effect until the 120th day after the date

1 the pharmacist or pharmacy affirmatively agrees to the adverse
2 material change in writing.

3 (d) An adverse material change to a pharmacy benefit network
4 contract proposed by a health benefit plan issuer or pharmacy
5 benefit manager must include notice that clearly and conspicuously
6 states that a pharmacist or pharmacy may choose to not agree to the
7 adverse material change and that the decision to not agree to the
8 adverse material change does not affect:

9 (1) the terms of the pharmacist's or pharmacy's
10 existing contract with the health benefit plan issuer or pharmacy
11 benefit manager; or

12 (2) the pharmacist's or pharmacy's participation in
13 another pharmacy benefit network.

14 (e) A pharmacist's or pharmacy's decision to not agree to an
15 adverse material change to a pharmacy benefit network contract does
16 not affect:

17 (1) the terms of the pharmacist's or pharmacy's
18 existing contract; or

19 (2) the pharmacist's or pharmacy's participation in
20 another pharmacy benefit network.

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

25 (g) This section does not apply to:

26 (1) a pharmacy benefit network contract:

27 (A) with an unspecified and indefinite duration;

1 (B) with no stated or automatic renewal period or
2 event; and

3 (C) that may only be terminated by notice from
4 one party to the other; or

5 (2) a proposed modification or addendum to a pharmacy
6 benefit network contract that is required by state or federal law or
7 rule.

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

14 (1) post the proposed modification or addendum to the
15 online portal described by Section 1369.6021; and

16 (2) provide to the pharmacist or pharmacy notice of
17 the proposed modification or addendum by e-mail, including:

18 (A) a link to the online portal;

19 (B) the National Council for Prescription Drug
20 Programs number or other identifier approved by the commissioner
21 for the pharmacist or pharmacy to which the proposed modification
22 or addendum applies; and

23 (C) a description of the proposed modification or
24 addendum in a manner that allows the pharmacist or pharmacy to
25 compare the proposed modification or addendum to the current
26 contract.

27 (b) If a pharmacist or pharmacy does not respond before the

1 31st day after the date the pharmacist or pharmacy receives notice
2 of a proposed modification or addendum under Subsection (a), the
3 health benefit plan issuer or pharmacy benefit manager may consider
4 the proposed modification or addendum approved by the pharmacist or
5 pharmacy and the modification or addendum takes effect on the date
6 described by Subsection (a).

7 (c) A pharmacy benefit network contract may not incorporate
8 by reference a document not included in a contract or contract
9 attachment, including a provider manual described by Section
10 1369.6025. All financial terms, including reimbursement rates and
11 methodology, must be set forth in the contract.

12 (d) This section does not apply to:

13 (1) a pharmacy benefit network contract:

14 (A) with an unspecified and indefinite duration;

15 (B) with no stated or automatic renewal period or
16 event; and

17 (C) that may only be terminated by notice from
18 one party to the other; or

19 (2) a proposed modification or addendum to a pharmacy
20 benefit network contract that is required by state or federal law or
21 rule.

22 Sec. 1369.6024. PHARMACY BENEFIT NETWORK CONTRACT
23 DISCLOSURE. A pharmacy benefit network contract must state that
24 the contract is subject to this chapter and any rules adopted by the
25 commissioner under this chapter.

26 Sec. 1369.6025. PROVIDER MANUAL DISCLOSURE. A health
27 benefit plan issuer or pharmacy benefit manager shall:

1 (1) make a provider manual readily available on the
2 online portal described by Section 1369.6021; and

3 (2) post a modification or addendum to the provider
4 manual to the online portal in the same manner as a contract
5 modification or addendum under Section 1369.6023(a).

6 Sec. 1369.6026. PHARMACY BENEFIT NETWORK CONTRACT FEE
7 LIMITATIONS. A health benefit plan issuer or pharmacy benefit
8 manager may not charge a fee, including an application or
9 participation fee, before providing a pharmacist or pharmacy with
10 the full proposed pharmacy benefit network contract, including any
11 financial terms applicable to the contract and corresponding
12 pharmacy benefit network.

13 Sec. 1369.6027. PHARMACY BENEFIT NETWORK PARTICIPATION
14 REQUIREMENTS PROHIBITED. A health benefit plan issuer or pharmacy
15 benefit manager may not:

16 (1) require a pharmacist or pharmacy to participate in
17 a pharmacy benefit network;

18 (2) condition a pharmacist's or pharmacy's
19 participation in a pharmacy benefit network on participation in any
20 other pharmacy benefit network; or

21 (3) penalize a pharmacist or pharmacy for refusing to
22 participate in a pharmacy benefit network.

23 SECTION 5. Section 1369.605, Insurance Code, is amended to
24 read as follows:

25 Sec. 1369.605. NETWORK CONTRACT FEE SCHEDULE. A pharmacy
26 benefit network contract must include ~~[specify or reference]~~ a
27 ~~[separate]~~ fee schedule. ~~[Unless otherwise available in the~~

~~1 contract, the fee schedule must be provided electronically in an~~
~~2 easily accessible and complete spreadsheet format and, on request,~~
~~3 in writing to each contracted pharmacist and pharmacy.]~~ The fee
4 schedule must describe:

5 (1) specific services or procedures that the
6 pharmacist or pharmacy may deliver and the amount of the
7 corresponding payment;

8 (2) a methodology for calculating the amount of the
9 payment based on a published fee schedule; or

10 (3) any other reasonable manner that provides an
11 ascertainable amount for payment for services.

12 SECTION 6. Section 1369.259(d), Insurance Code, is
13 repealed.

14 SECTION 7. (a) Section 1369.153, Insurance Code, as
15 amended by this Act, applies only to a health benefit plan
16 delivered, issued for delivery, or renewed on or after January 1,
17 2026. A health benefit plan delivered, issued for delivery, or
18 renewed before January 1, 2026, is governed by the law as it existed
19 immediately before the effective date of this Act, and that law is
20 continued in effect for that purpose.

21 (b) Chapter 1369, Insurance Code, as amended by this Act,
22 applies only to a contract entered into or renewed on or after the
23 effective date of this Act. A contract entered into or renewed
24 before the effective date of this Act is governed by the law as it
25 existed immediately before the effective date of this Act, and that
26 law is continued in effect for that purpose.

27 SECTION 8. This Act takes effect September 1, 2025.