By: Oliverson H.B. No. 1236

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of the relationship between a pharmacy benefit manager and a pharmacy; providing a civil penalty.

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

SECTION 1. Section 551.003, Occupations Code, is amended by adding Subdivision (31-a) to read as follows:

(31-a) "Pharmacy benefit manager" has the meaning assigned by Section 4151.151, Insurance Code.

SECTION 2. Subchapter C, Chapter 562, Occupations Code, is amended by adding Section 562.113 to read as follows:

Sec. 562.113. CERTAIN RELATIONSHIPS WITH PHARMACY BENEFIT MANAGERS PROHIBITED; TEMPORARY AUTHORIZATIONS. (a) Except as provided by this section, a pharmacy benefit manager may not control or be under common control with a pharmacy licensed under Chapter 560.

(b) For purposes of this section:

(1) a pharmacy benefit manager controls a pharmacy licensed under Chapter 560 if the pharmacy benefit manager, or an entity that is managed by or is a subsidiary of a pharmacy benefit manager or that has a direct or indirect ownership interest in a pharmacy benefit manager, directly or indirectly directs, manages, or influences the operations or policies of the pharmacy through ownership, a contract, shared governance, overlapping management, audit authority, an exclusive provider agreement, a formulary

management clause, or another arrangement conferring material influence over the professional practice of pharmacy, including dispensing decisions, patient steering, clinical operations, or the independent judgment of a pharmacist licensed under Chapter 558; and

(2) a pharmacy benefit manager is under common control with a pharmacy licensed under Chapter 560 if an entity, directly or indirectly through a subsidiary or other affiliated entity, has a direct or indirect ownership interest in or indirectly directs, manages, or influences the operations or policies, through ownership, a contract, shared governance, overlapping management, audit authority, an exclusive provider agreement, a formulary management clause, or another arrangement, of both:

(A) the pharmacy benefit manager; and

(B) either:

(i) the pharmacy; or

(ii) a pharmacist licensed under Chapter 558 who is associated with the pharmacy if an arrangement directly or indirectly confers the entity material influence over the pharmacist's professional practice of pharmacy, including dispensing decisions, patient steering, clinical operations, or independent judgment.

(c) The board by rule may authorize the temporary operation in violation of Subsection (a) of a pharmacy licensed under Chapter 560 if the board determines operation of the pharmacy is necessary to provide patient access to a drug that is:

(1) designated by the United States Food and Drug

Administration as an orphan drug with limited distribution; or

(2) subject to a risk evaluation and mitigation strategy approved by the United States Food and Drug Administration that includes limited distribution.

(d) The board by rule may authorize the temporary operation in violation of Subsection (a) of a pharmacy that provides, in the manner required by board rule, proof of substantial progress toward completion of a bona fide sale of the pharmacy to an eligible buyer. For purposes of this subsection, "bona fide sale" means an arm's-length transfer evidenced by a written letter of intent or purchase agreement.

(e) The board by rule shall establish procedures and requirements to provide for authorization of the temporary operation of a pharmacy under Subsection (c) or (d).

SECTION 3. Subchapter A, Chapter 565, Occupations Code, is amended by adding Section 565.004 to read as follows:

Sec. 565.004. DISCIPLINARY ACTION FOR PHARMACY BENEFIT MANAGER INTEREST IN LICENSE HOLDER. (a) This section does not apply to a pharmacy operating under a temporary authorization under Section 562.113(c) or (d).

(b) The board may not issue or renew a pharmacy license under Chapter 560 if a pharmacy benefit manager controls or is under common control with the applicant or license holder in violation of Section 562.113(a).

(c) The board shall revoke a pharmacy license issued under Chapter 560 if the board determines that a pharmacy benefit manager controls or is under common control with the license holder in

violation of Section 562.113(a).

SECTION 4. Section 566.101, Occupations Code, is amended by adding Subsection (c) to read as follows:

(c) A license holder that operates a pharmacy in violation of Section 562.113(a) is liable to the state for a civil penalty not to exceed $10,000 for each violation. Each day a violation continues is considered a separate violation.

SECTION 5. Not later than December 1, 2027, the Texas State Board of Pharmacy shall:

(1) adopt rules establishing criteria to determine whether a pharmacy benefit manager controls or is under common control with an applicant for or holder of a license issued under Chapter 560, Occupations Code, in violation of Section 562.113(a), Occupations Code, as added by this Act;

(2) complete a review of each pharmacy licensed under Chapter 560, Occupations Code, as of September 1, 2027, to determine whether a pharmacy benefit manager controls or is under common control with the pharmacy in violation of Section 562.113(a), Occupations Code, as added by this Act; and

(3) notify each pharmacy of the board's determination under this section.

SECTION 6. Not later than December 1, 2027, the Texas State Board of Pharmacy shall adopt any rules necessary to implement the changes in law made by this Act.

SECTION 7. Section 562.113, Occupations Code, as added by this Act, applies to the operation of a pharmacy on or after January 1, 2028.

SECTION 8. Section 565.004, Occupations Code, as added by this Act, applies to disciplinary action initiated against a pharmacy under Chapter 565, Occupations Code, on or after January 1, 2028, regardless of whether the relationship of the pharmacy benefit manager with the pharmacy commenced before, on, or after that date.

SECTION 9. Section 566.101(c), Occupations Code, as added by this Act, applies only to the operation of a pharmacy in violation of Section 562.113(a), Occupations Code, as added by this Act, on or after January 1, 2028.

SECTION 10. This Act takes effect September 1, 2027.