By: Gutierrez S.B. No. 476

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

receive the drug on behalf of the covered entity;

(2) deny, restrict, prohibit, or otherwise limit the acquisition of a 340B drug by, or delivery of the drug to, 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 receive the drug on behalf of the covered entity; or

(3) require 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 receive a 340B drug on behalf of the covered entity to submit any claim or utilization data as a condition for the acquisition of a 340B drug by, or delivery of a 340B drug to, the covered entity, pharmacist or pharmacy under contract with the covered entity, or other entity authorized to receive the drug, as applicable.

(c) This section does not apply to:

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

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

(3) the Texas HIV medication program established under Section 85.061.

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

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

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

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

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

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

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

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

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

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

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

(2) in conflict with:

(A) federal law or a related regulation; or

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

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

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

Sec. 1369.701. DEFINITIONS. In this subchapter:

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

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

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

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

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

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

(7) "Third-party payor" means any person, other than a 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

to:

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

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

(3) a basic coverage plan under Chapter 1551;

(4) a basic plan under Chapter 1575;

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

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

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

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

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

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

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

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

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

(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

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

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

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

(b) Subchapter O, Chapter 1369, Insurance Code, as added by this Act, applies only to a health benefit plan delivered, issued for delivery, or renewed on or after January 1, 2028.

SECTION 4. This Act takes effect September 1, 2027.