

BILL ANALYSIS

H.B. 1763
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Insurance
Committee Report (Unamended)

BACKGROUND AND PURPOSE

There are concerns that certain pharmacy benefit managers (PBMs) engage in practices that create barriers to fair competition between community pharmacies and PBM-owned pharmacies, such as imposing retroactive fees against pharmacies to level PBM costs or requiring pharmacies to attain excessive credentialing or certification to reduce their access to specialty drugs, which are frequently sold by a competing PBM-owned pharmacy. There are additional concerns that PBMs reimburse their own affiliate pharmacies at higher rates than they reimburse other pharmacies for the same services and often create an unlevel playing field by requiring patients to use a PBM-owned mail-order pharmacy while restricting the ability of other pharmacies to deliver prescriptions through the mail. H.B. 1763 seeks to address these concerns and ensure a fairer health care landscape by establishing requirements for, and restrictions on, the contractual relationship between a pharmacist or pharmacy and a health benefit plan issuer or PBM.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

H.B. 1763 amends the Insurance Code to prohibit a health benefit plan issuer or pharmacy benefit manager (PBM) from directly or indirectly reducing the amount of a claim payment to a pharmacist or pharmacy after adjudication of the claim through the use of an aggregated effective rate, quality assurance program, other direct or indirect remuneration fee, or otherwise, except in accordance with an audit or by mutual agreement of the parties under an applicable pharmacy benefit network contract. The bill expressly does not prohibit a plan issuer or PBM from increasing a claim payment amount after adjudication of the claim.

H.B. 1763 prohibits a PBM from paying an affiliated pharmacist or pharmacy a reimbursement amount that is more than the amount the PBM pays a nonaffiliated pharmacist or pharmacy for the same pharmacist service. The bill requires a pharmacy benefit network contract to specify or reference a separate fee schedule and requires the fee schedule, unless otherwise available in the contract, to be provided electronically in an easily accessible and complete spreadsheet format and, on request, in writing to each contracted pharmacist and pharmacy. The bill sets out requirements for the contents of the fee schedule.

H.B. 1763 entitles a pharmacist or pharmacy that is a member of a pharmacy services administrative organization that enters into a contract on a pharmacist's or pharmacy's behalf to

receive from the pharmacy services administrative organization a copy of the contract provisions applicable to the pharmacist or pharmacy, including each provision relating to the pharmacist's or pharmacy's rights and obligations under the contract.

H.B. 1763 prohibits the following from being conditions of a contract between a health benefit plan issuer or PBM and a pharmacist or pharmacy, except in a case in which the plan issuer or PBM makes a credible allegation of fraud against the pharmacist or pharmacy and provides reasonable notice of the allegation and the basis of the allegation to the pharmacist or pharmacy:

- prohibiting the pharmacist or pharmacy from mailing or delivering a drug to a patient on the patient's request, to the extent permitted by law; or
- prohibiting the pharmacist or pharmacy from charging a shipping and handling fee to a patient requesting a prescription be mailed or delivered if the pharmacist or pharmacy discloses to the patient before the delivery the fee that will be charged and that it may not be reimbursable.

The bill authorizes a plan issuer or PBM, as a condition of contract, to prohibit a pharmacist or pharmacy from mailing the drugs for more than 25 percent of the claims the pharmacist or pharmacy submits to the plan issuer or PBM during a calendar year.

H.B. 1763 prohibits the following from being conditions of a contract between a health benefit plan issuer or PBM and a pharmacist or pharmacy:

- requiring pharmacist or pharmacy accreditation standards or recertification requirements inconsistent with, more stringent than, or in addition to federal and state requirements; and
- prohibiting dispensation of any drug authorized under the pharmacist's or pharmacy's license, except under certain conditions.

The bill authorizes a plan issuer or PBM to require as a condition of a contract with a specialty pharmacy that the pharmacy obtain accreditation from not more than two specified independent accreditation organizations.

H.B. 1763 prohibits a pharmacist or pharmacy from charging a health benefit plan issuer or PBM for the delivery of a prescription drug to a patient on request unless the charge is specifically agreed to by the plan issuer or PBM. The bill prohibits a PBM from retaliating against a pharmacist or pharmacy based on the pharmacist's or pharmacy's exercise of any right or remedy under applicable statutory provisions and sets out certain actions considered to be prohibited retaliation. For purposes of these provisions, a PBM is not considered to have retaliated against a pharmacist or pharmacy if the PBM takes an action in response to a credible allegation of fraud against the pharmacist or pharmacy and provides reasonable notice to the pharmacist or pharmacy of the allegation of fraud and the basis of the allegation before taking the action.

H.B. 1763 establishes the applicability of its provisions and prohibits those provisions from being waived, voided, or nullified by contract.

EFFECTIVE DATE

September 1, 2021.