

## **BILL ANALYSIS**

Senate Research Center

C.S.H.B. 2817  
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Business & Commerce  
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Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

C.S.H.B. 2817 amends current law relating to the contractual relationship between a pharmacist or pharmacy and a health benefit plan issuer or pharmacy benefit manager.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 1369, Insurance Code, by adding Subchapter K, as follows:

#### SUBCHAPTER K. CONTRACTS WITH PHARMACISTS AND PHARMACIES

Sec. 1369.501. DEFINITIONS. Defines "pharmacy benefit manager," "pharmacy benefit network," and "pharmacy services administrative organization" for purposes of this subchapter.

Sec. 1369.502. APPLICABILITY OF SUBCHAPTER. (a) Provides that 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 offered by:

- (1) an insurance company;
- (2) a group hospital service corporation operating under Chapter 842 (Group Hospital Service Corporations);
- (3) a health maintenance organization operating under Chapter 843 (Health Maintenance Organizations);
- (4) an approved nonprofit health corporation that holds a certificate of authority under Chapter 844 (Certification of Certain Nonprofit Health Corporations);
- (5) a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846 (Multiple Employer Welfare Arrangements);
- (6) a stipulated premium company operating under Chapter 884 (Stipulated Premium Insurance Companies);
- (7) a fraternal benefit society operating under Chapter 885 (Fraternal Benefit Societies);
- (8) a Lloyd's plan operating under Chapter 941 (Lloyd's Plan); or

(9) an exchange operating under Chapter 942 (Reciprocal and Interinsurance Exchanges).

(b) Provides that this subchapter, notwithstanding any other law, applies to:

(1) a small employer health benefit plan subject to Chapter 1501 (Health Insurance Portability and Availability Act), including coverage provided through a health group cooperative under Subchapter B (Coalitions and Cooperatives) of that chapter;

(2) a standard health benefit plan issued under Chapter 1507 (Consumer Choice of Benefits Plans);

(3) health benefits provided by or through a church benefits board under Subchapter I (Church Benefits Boards), Chapter 22, Business Organizations Code;

(4) group health coverage made available by a school district in accordance with Section 22.004 (Group Health Benefits For School Employees), Education Code;

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

(6) a self-funded health benefit plan sponsored by a professional employer organization under Chapter 91 (Professional Employer Organizations), Labor Code.

(c) Provides that this subchapter does not apply to an issuer or provider of health benefits under or a pharmacy benefit manager administering pharmacy benefits under a workers' compensation insurance policy or other form of providing medical benefits under Title 5 (Workers' Compensation), Labor Code.

**Sec. 1369.503. REDUCTION OF CERTAIN CLAIM PAYMENT AMOUNTS PROHIBITED.** (a) Prohibits a health benefit plan issuer or pharmacy benefit manager 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, a quality assurance program, other direct or indirect remuneration fee, or otherwise, except:

(1) in accordance with an audit performed under Subchapter F (Audits of Pharmacists and Pharmacies); or

(2) by mutual agreement of the parties under a pharmacy benefit network contract under which the health benefit plan issuer or pharmacy benefit manager does not require as a condition of the pharmacy benefit network contract or of participation in the pharmacy benefit network that a pharmacist or pharmacy agree to allow the health benefit plan issuer or pharmacy benefit manager to reduce the amount of a claim payment to the pharmacist or pharmacy after adjudication of the claim.

(b) Provides that nothing in this section prohibits a health benefit plan issuer or pharmacy benefit manager from increasing a claim payment amount after adjudication of the claim.

**Sec. 1369.504. REIMBURSEMENT OF AFFILIATED AND NONAFFILIATED PHARMACISTS AND PHARMACIES.** (a) Defines "affiliated pharmacist or pharmacy" and "nonaffiliated pharmacist or pharmacy" for purposes of this section.

(b) Prohibits a pharmacy benefit manager from paying an affiliated pharmacist or pharmacy a reimbursement amount that is more than the amount the pharmacy benefit manager pays a nonaffiliated pharmacist or pharmacy for the same pharmacist service.

Sec. 1369.505. NETWORK CONTRACT FEE SCHEDULE. Requires a pharmacy benefit network contract to specify or reference a separate fee schedule. 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. Requires the fee schedule to describe:

- (1) specific services or procedures that the pharmacist or pharmacy may deliver and the amount of the corresponding payment;
- (2) a methodology for calculating the amount of the payment based on a published fee schedule; or
- (3) any other reasonable manner that provides an ascertainable amount for payment for services.

Sec. 1369.506. DISCLOSURE OF PHARMACY SERVICES ADMINISTRATIVE ORGANIZATION CONTRACT. Entitles a pharmacist or pharmacy that is a member of a pharmacy services administrative organization that enters into a contract with a health benefit plan issuer or pharmacy benefit manager on the 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.

Sec. 1369.507. DELIVERY OF DRUGS. (a) Prohibits a health benefit plan issuer or pharmacy benefit manager, except in a case in which the health benefit plan issuer or pharmacy benefit manager 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, from prohibiting a pharmacist or pharmacy as a condition of a contract with the pharmacist or pharmacy from:

- (1) mailing or delivering a drug to a patient on the patient's request, to the extent permitted by law; or
- (2) 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:

(A) the fee that will be charged; and

(B) that the fee may not be reimbursable by the health benefit plan issuer or pharmacy benefit manager.

(b) Prohibits a pharmacist or pharmacy from charging a health benefit plan issuer or pharmacy benefit manager for the delivery of a prescription drug as described by this section unless the charge is specifically agreed to by the health benefit plan issuer or pharmacy benefit manager.

(c) Authorizes a health benefit plan issuer or pharmacy benefit manager, notwithstanding Subsection (a), to as a condition of contract prohibit a pharmacist or pharmacy from mailing the drugs for more than 25 percent of the claims the pharmacist or pharmacy submits to the health benefit plan issuer or pharmacy benefit manager during a calendar year.

Sec. 1369.508. PROFESSIONAL STANDARDS AND SCOPE OF PRACTICE REQUIREMENTS. (a) Prohibits a health benefit plan issuer or pharmacy benefit manager from as a condition of a contract with a pharmacist or pharmacy:

(1) except as provided by Subsection (b), requiring pharmacist or pharmacy accreditation standards or recertification requirements inconsistent with, more stringent than, or in addition to federal and state requirements; or

(2) prohibiting a licensed pharmacist or pharmacy from dispensing any drug that is authorized to be dispensed under the pharmacist's or pharmacy's license unless:

(A) applicable state or federal law prohibits the pharmacist or pharmacy from dispensing the drug; or

(B) the manufacturer of the drug requires that a pharmacist or pharmacy possess one or more accreditations or certifications to dispense the drug and the pharmacist or pharmacy does not meet the requirement.

(b) Authorizes a health benefit plan issuer or pharmacy benefit manager to require as a condition of a contract with a specialty pharmacy that the specialty pharmacy obtain accreditation from not more than two of the following independent accreditation organizations:

(1) URAC, formerly the Utilization Review Accreditation Commission;

(2) The Joint Commission;

(3) Accreditation Commission for Health Care (ACHC);

(4) Center for Pharmacy Practice Accreditation (CPPA); or

(5) National Committee for Quality Assurance (NCQA).

Sec. 1369.509. RETALIATION PROHIBITED. (a) Prohibits a pharmacy benefit manager from retaliating against a pharmacist or pharmacy based on the pharmacist's or pharmacy's exercise of any right or remedy under this chapter (Benefits Related to Prescription Drugs and Devices and Related Services). Provides that retaliation prohibited by this section includes:

(1) terminating or refusing to renew a contract with the pharmacist or pharmacy;

(2) subjecting the pharmacist or pharmacy to increased audits; or

(3) failing to promptly pay the pharmacist or pharmacy any money owed by the pharmacy benefit manager to the pharmacist or pharmacy.

(b) Provides that, for purposes of this section, a pharmacy benefit manager is not considered to have retaliated against a pharmacist or pharmacy if the pharmacy benefit manager:

(1) takes an action in response to a credible allegation of fraud against the pharmacist or pharmacy; and

(2) provides reasonable notice to the pharmacist or pharmacy of the allegation of fraud and the basis of the allegation before taking the action.

Sec. 1369.510. WAIVER PROHIBITED. Prohibits the provisions of this subchapter from being waived, voided, or nullified by contract.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2019.