

1-1 By: Lucio III, et al. H.B. No. 2817
 1-2 (Senate Sponsor - Hughes, et al.)
 1-3 (In the Senate - Received from the House May 1, 2019;
 1-4 May 3, 2019, read first time and referred to Committee on Business
 1-5 & Commerce; May 21, 2019, reported adversely, with favorable
 1-6 Committee Substitute by the following vote: Yeas 8, Nays 0;
 1-7 May 21, 2019, sent to printer.)

1-8 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-9				
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17			X	
1-18	X			

1-19 COMMITTEE SUBSTITUTE FOR H.B. No. 2817 By: Nichols

1-20 A BILL TO BE ENTITLED
 1-21 AN ACT

1-22 relating to the contractual relationship between a pharmacist or
 1-23 pharmacy and a health benefit plan issuer or pharmacy benefit
 1-24 manager.

1-25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
 1-26 SECTION 1. Chapter 1369, Insurance Code, is amended by
 1-27 adding Subchapter K to read as follows:

1-28 SUBCHAPTER K. CONTRACTS WITH PHARMACISTS AND PHARMACIES

1-29 Sec. 1369.501. DEFINITIONS. In this subchapter:

1-30 (1) "Pharmacy benefit manager" has the meaning
 1-31 assigned by Section 4151.151.

1-32 (2) "Pharmacy benefit network" means a network of
 1-33 pharmacies that have contracted with a pharmacy benefit manager to
 1-34 provide pharmacist services to enrollees.

1-35 (3) "Pharmacy services administrative organization"
 1-36 means an entity that contracts with a pharmacist or pharmacy to
 1-37 conduct on behalf of the pharmacist or pharmacy the pharmacist's or
 1-38 pharmacy's business with a third-party payor, including a pharmacy
 1-39 benefit manager, in connection with pharmacy benefits and to assist
 1-40 the pharmacist or pharmacy by providing administrative services,
 1-41 including negotiating, executing, and administering a contract
 1-42 with a third-party payor and communicating with the third-party
 1-43 payor in connection with a contract or pharmacy benefits.

1-44 Sec. 1369.502. APPLICABILITY OF SUBCHAPTER. (a) This
 1-45 subchapter applies only to a health benefit plan that provides
 1-46 benefits for medical or surgical expenses incurred as a result of a
 1-47 health condition, accident, or sickness, including an individual,
 1-48 group, blanket, or franchise insurance policy or insurance
 1-49 agreement, a group hospital service contract, or an individual or
 1-50 group evidence of coverage or similar coverage document that is
 1-51 offered by:

1-52 (1) an insurance company;

1-53 (2) a group hospital service corporation operating
 1-54 under Chapter 842;

1-55 (3) a health maintenance organization operating under
 1-56 Chapter 843;

1-57 (4) an approved nonprofit health corporation that
 1-58 holds a certificate of authority under Chapter 844;

1-59 (5) a multiple employer welfare arrangement that holds
 1-60 a certificate of authority under Chapter 846;

- 2-1 (6) a stipulated premium company operating under
- 2-2 Chapter 884;
- 2-3 (7) a fraternal benefit society operating under
- 2-4 Chapter 885;
- 2-5 (8) a Lloyd's plan operating under Chapter 941; or
- 2-6 (9) an exchange operating under Chapter 942.

2-7 (b) Notwithstanding any other law, this subchapter applies
 2-8 to:

2-9 (1) a small employer health benefit plan subject to
 2-10 Chapter 1501, including coverage provided through a health group
 2-11 cooperative under Subchapter B of that chapter;

2-12 (2) a standard health benefit plan issued under
 2-13 Chapter 1507;

2-14 (3) health benefits provided by or through a church
 2-15 benefits board under Subchapter I, Chapter 22, Business
 2-16 Organizations Code;

2-17 (4) group health coverage made available by a school
 2-18 district in accordance with Section 22.004, Education Code;

2-19 (5) a regional or local health care program operated
 2-20 under Section 75.104, Health and Safety Code; and

2-21 (6) a self-funded health benefit plan sponsored by a
 2-22 professional employer organization under Chapter 91, Labor Code.

2-23 (c) This subchapter does not apply to an issuer or provider
 2-24 of health benefits under or a pharmacy benefit manager
 2-25 administering pharmacy benefits under a workers' compensation
 2-26 insurance policy or other form of providing medical benefits under
 2-27 Title 5, Labor Code.

2-28 Sec. 1369.503. REDUCTION OF CERTAIN CLAIM PAYMENT AMOUNTS
 2-29 PROHIBITED. (a) A health benefit plan issuer or pharmacy benefit
 2-30 manager may not directly or indirectly reduce the amount of a claim
 2-31 payment to a pharmacist or pharmacy after adjudication of the claim
 2-32 through the use of an aggregated effective rate, a quality
 2-33 assurance program, other direct or indirect remuneration fee, or
 2-34 otherwise, except:

2-35 (1) in accordance with an audit performed under
 2-36 Subchapter F; or

2-37 (2) by mutual agreement of the parties under a
 2-38 pharmacy benefit network contract under which the health benefit
 2-39 plan issuer or pharmacy benefit manager does not require as a
 2-40 condition of the pharmacy benefit network contract or of
 2-41 participation in the pharmacy benefit network that a pharmacist or
 2-42 pharmacy agree to allow the health benefit plan issuer or pharmacy
 2-43 benefit manager to reduce the amount of a claim payment to the
 2-44 pharmacist or pharmacy after adjudication of the claim.

2-45 (b) Nothing in this section prohibits a health benefit plan
 2-46 issuer or pharmacy benefit manager from increasing a claim payment
 2-47 amount after adjudication of the claim.

2-48 Sec. 1369.504. REIMBURSEMENT OF AFFILIATED AND
 2-49 NONAFFILIATED PHARMACISTS AND PHARMACIES. (a) In this section:

2-50 (1) "Affiliated pharmacist or pharmacy" means a
 2-51 pharmacist or pharmacy that directly, or indirectly through one or
 2-52 more intermediaries, controls or is controlled by, or is under
 2-53 common control with, a pharmacy benefit manager.

2-54 (2) "Nonaffiliated pharmacist or pharmacy" means a
 2-55 pharmacist or pharmacy that does not directly, or indirectly
 2-56 through one or more intermediaries, control and is not controlled
 2-57 by or under common control with a pharmacy benefit manager.

2-58 (b) A pharmacy benefit manager may not pay an affiliated
 2-59 pharmacist or pharmacy a reimbursement amount that is more than the
 2-60 amount the pharmacy benefit manager pays a nonaffiliated pharmacist
 2-61 or pharmacy for the same pharmacist service.

2-62 Sec. 1369.505. NETWORK CONTRACT FEE SCHEDULE. A pharmacy
 2-63 benefit network contract must specify or reference a separate fee
 2-64 schedule. Unless otherwise available in the contract, the fee
 2-65 schedule must be provided electronically in an easily accessible
 2-66 and complete spreadsheet format and, on request, in writing to each
 2-67 contracted pharmacist and pharmacy. The fee schedule must
 2-68 describe:

2-69 (1) specific services or procedures that the

3-1 pharmacist or pharmacy may deliver and the amount of the
3-2 corresponding payment;
3-3 (2) a methodology for calculating the amount of the
3-4 payment based on a published fee schedule; or
3-5 (3) any other reasonable manner that provides an
3-6 ascertainable amount for payment for services.
3-7 Sec. 1369.506. DISCLOSURE OF PHARMACY SERVICES
3-8 ADMINISTRATIVE ORGANIZATION CONTRACT. A pharmacist or pharmacy
3-9 that is a member of a pharmacy services administrative organization
3-10 that enters into a contract with a health benefit plan issuer or
3-11 pharmacy benefit manager on the pharmacist's or pharmacy's behalf
3-12 is entitled to receive from the pharmacy services administrative
3-13 organization a copy of the contract provisions applicable to the
3-14 pharmacist or pharmacy, including each provision relating to the
3-15 pharmacist's or pharmacy's rights and obligations under the
3-16 contract.
3-17 Sec. 1369.507. DELIVERY OF DRUGS. (a) Except in a case in
3-18 which the health benefit plan issuer or pharmacy benefit manager
3-19 makes a credible allegation of fraud against the pharmacist or
3-20 pharmacy and provides reasonable notice of the allegation and the
3-21 basis of the allegation to the pharmacist or pharmacy, a health
3-22 benefit plan issuer or pharmacy benefit manager may not as a
3-23 condition of a contract with a pharmacist or pharmacy prohibit the
3-24 pharmacist or pharmacy from:
3-25 (1) mailing or delivering a drug to a patient on the
3-26 patient's request, to the extent permitted by law; or
3-27 (2) charging a shipping and handling fee to a patient
3-28 requesting a prescription be mailed or delivered if the pharmacist
3-29 or pharmacy discloses to the patient before the delivery:
3-30 (A) the fee that will be charged; and
3-31 (B) that the fee may not be reimbursable by the
3-32 health benefit plan issuer or pharmacy benefit manager.
3-33 (b) A pharmacist or pharmacy may not charge a health benefit
3-34 plan issuer or pharmacy benefit manager for the delivery of a
3-35 prescription drug as described by this section unless the charge is
3-36 specifically agreed to by the health benefit plan issuer or
3-37 pharmacy benefit manager.
3-38 (c) Notwithstanding Subsection (a), a health benefit plan
3-39 issuer or pharmacy benefit manager may as a condition of contract
3-40 prohibit a pharmacist or pharmacy from mailing the drugs for more
3-41 than 25 percent of the claims the pharmacist or pharmacy submits to
3-42 the health benefit plan issuer or pharmacy benefit manager during a
3-43 calendar year.
3-44 Sec. 1369.508. PROFESSIONAL STANDARDS AND SCOPE OF PRACTICE
3-45 REQUIREMENTS. (a) A health benefit plan issuer or pharmacy benefit
3-46 manager may not as a condition of a contract with a pharmacist or
3-47 pharmacy:
3-48 (1) except as provided by Subsection (b), require
3-49 pharmacist or pharmacy accreditation standards or recertification
3-50 requirements inconsistent with, more stringent than, or in addition
3-51 to federal and state requirements; or
3-52 (2) prohibit a licensed pharmacist or pharmacy from
3-53 dispensing any drug that may be dispensed under the pharmacist's or
3-54 pharmacy's license unless:
3-55 (A) applicable state or federal law prohibits the
3-56 pharmacist or pharmacy from dispensing the drug; or
3-57 (B) the manufacturer of the drug requires that a
3-58 pharmacist or pharmacy possess one or more accreditations or
3-59 certifications to dispense the drug and the pharmacist or pharmacy
3-60 does not meet the requirement.
3-61 (b) A health benefit plan issuer or pharmacy benefit manager
3-62 may require as a condition of a contract with a specialty pharmacy
3-63 that the specialty pharmacy obtain accreditation from not more than
3-64 two of the following independent accreditation organizations:
3-65 (1) URAC, formerly the Utilization Review
3-66 Accreditation Commission;
3-67 (2) The Joint Commission;
3-68 (3) Accreditation Commission for Health Care (ACHC);
3-69 (4) Center for Pharmacy Practice Accreditation

4-1 (CPPA); or
4-2 (5) National Committee for Quality Assurance (NCQA).
4-3 Sec. 1369.509. RETALIATION PROHIBITED. (a) A pharmacy
4-4 benefit manager may not retaliate against a pharmacist or pharmacy
4-5 based on the pharmacist's or pharmacy's exercise of any right or
4-6 remedy under this chapter. Retaliation prohibited by this section
4-7 includes:
4-8 (1) terminating or refusing to renew a contract with
4-9 the pharmacist or pharmacy;
4-10 (2) subjecting the pharmacist or pharmacy to increased
4-11 audits; or
4-12 (3) failing to promptly pay the pharmacist or pharmacy
4-13 any money owed by the pharmacy benefit manager to the pharmacist or
4-14 pharmacy.
4-15 (b) For purposes of this section, a pharmacy benefit manager
4-16 is not considered to have retaliated against a pharmacist or
4-17 pharmacy if the pharmacy benefit manager:
4-18 (1) takes an action in response to a credible
4-19 allegation of fraud against the pharmacist or pharmacy; and
4-20 (2) provides reasonable notice to the pharmacist or
4-21 pharmacy of the allegation of fraud and the basis of the allegation
4-22 before taking the action.
4-23 Sec. 1369.510. WAIVER PROHIBITED. The provisions of this
4-24 subchapter may not be waived, voided, or nullified by contract.
4-25 SECTION 2. The change in law made by this Act applies only
4-26 to a contract entered into or renewed on or after the effective date
4-27 of this Act. A contract entered into or renewed before the
4-28 effective date of this Act is governed by the law as it existed
4-29 immediately before the effective date of this Act, and that law is
4-30 continued in effect for that purpose.
4-31 SECTION 3. This Act takes effect September 1, 2019.

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