

S.B. No. 704

1 AN ACT
2 relating to the regulation of pharmacy benefit managers and mail
3 order pharmacies.

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

5 SECTION 1. Chapter 2158, Government Code, is amended by
6 adding Subchapter H to read as follows:

7 SUBCHAPTER H. PURCHASE OF PHARMACY BENEFIT MANAGER SERVICES

8 Sec. 2158.401. DEFINITION; APPLICABILITY. (a) In this
9 subchapter, "state agency" means a board, commission, department,
10 office, or other agency in the executive, legislative, or judicial
11 branch of state government that is created by the constitution or a
12 statute of this state, including an institution of higher education
13 as defined by Section 61.003, Education Code.

14 (b) This subchapter applies in relation to a state agency
15 contract or proposed contract for pharmacy benefit manager services
16 without regard to whether the contract or proposed contract is
17 otherwise subject to this subtitle.

18 Sec. 2158.402. REQUIRED DISCLOSURE. (a) A state agency on
19 request of another state agency shall disclose information relating
20 to the amounts charged by a pharmacy benefit manager for pharmacy
21 benefit manager services provided under a prescription drug program
22 and other requested pricing information related to a contract for
23 pharmacy benefit manager services. A state agency shall provide
24 information requested under this section not later than the 30th

1 day after the date the information is requested.

2 (b) Subsection (a) does not require a state agency to
3 disclose information the agency is specifically prohibited from
4 disclosing under a contract with a pharmacy benefit manager
5 executed before September 1, 2009.

6 (c) A contract entered, amended, or extended on or after
7 September 1, 2009, may not contain a provision that prohibits a
8 state agency from disclosing under this subchapter information on
9 the amounts charged by a pharmacy benefit manager for pharmacy
10 benefit manager services provided under a prescription drug program
11 or from disclosing under this subchapter other pricing information
12 related to the contract.

13 Sec. 2158.403. CONFIDENTIALITY. The information received
14 by a state agency under this subchapter may not be disclosed to a
15 person outside of the state agency or its agents.

16 SECTION 2. Subchapter B, Chapter 1369, Insurance Code, is
17 amended by adding Section 1369.0551 to read as follows:

18 Sec. 1369.0551. STUDY. (a) The department shall conduct a
19 study to evaluate the ways in which pharmacy benefit managers use
20 prescription drug information to manage therapeutic drug
21 interchange programs and other drug substitution recommendations
22 made by pharmacy benefit managers or other similar entities. The
23 study must include information regarding pharmacy benefit
24 managers:

25 (1) intervening in the delivery or transmission of a
26 prescription from a prescribing health care practitioner to a
27 pharmacist for purposes of influencing the prescribing health care

1 practitioner's choice of therapy;

2 (2) recommending that a prescribing health care
3 practitioner change from the originally prescribed medication to
4 another medication, including generic substitutions and
5 therapeutic interchanges;

6 (3) changing a drug or device prescribed by a health
7 care practitioner without the consent of the prescribing health
8 care practitioner;

9 (4) changing a patient cost-sharing obligation for the
10 cost of a prescription drug or device, including placing a drug or
11 device on a higher formulary tier than the initial contracted
12 benefit level; and

13 (5) removing a drug or device from a group health
14 benefit plan formulary without providing proper enrollee notice.

15 (b) Not later than August 1, 2010, the department shall
16 submit to the governor, the lieutenant governor, the speaker of the
17 house of representatives, and the appropriate standing committees
18 of the legislature a report regarding the results of the study
19 required by Subsection (a), together with any recommendations for
20 legislation.

21 (c) This section expires September 1, 2010.

22 SECTION 3. Subchapter B, Chapter 1551, Insurance Code, is
23 amended by adding Section 1551.067 to read as follows:

24 Sec. 1551.067. PHARMACY BENEFIT MANAGER CONTRACTS. (a) In
25 awarding a contract to provide pharmacy benefit manager services
26 under this chapter, the board of trustees is not required to select
27 the lowest bid but must select a contract that meets the criteria

1. established by this section.

2 (b) The contract must state that:

3 (1) the board of trustees is entitled to audit the
4 pharmacy benefit manager to verify costs and discounts associated
5 with drug claims, pharmacy benefit manager compliance with contract
6 requirements, and services provided by subcontractors;

7 (2) the audit must be conducted by an independent
8 auditor in accordance with established auditing standards; and

9 (3) to conduct the audit, the board of trustees and the
10 independent auditor are entitled access to information related to
11 the services and the costs associated with the services performed
12 under the contract, including access to the pharmacy benefit
13 manager's facilities, records, contracts, medical records, and
14 agreements with subcontractors.

15 (c) The contract must define the information that the
16 pharmacy benefit manager is required to provide to the board of
17 trustees concerning the audit of the retail, independent, and mail
18 order pharmacies performing services under the contract and
19 describe how the results of these audits must be reported to the
20 board of trustees, including how often the results must be
21 reported. The contract must state whether the pharmacy benefit
22 manager is required to return recovered overpayments to the board
23 of trustees.

24 (d) The contract must state that any audit of a mail order
25 pharmacy owned by the pharmacy benefit manager must be conducted by
26 an independent auditor selected by the board of trustees in
27 accordance with established auditing standards.

1 SECTION 4. Section 1551.224, Insurance Code, is amended to
2 read as follows:

3 Sec. 1551.224. MAIL ORDER REQUIREMENT FOR PRESCRIPTION DRUG
4 COVERAGE PROHIBITED. (a) The board of trustees or a health
5 benefit plan under this chapter that provides benefits for
6 prescription drugs may not require a participant in the group
7 benefits program to purchase a prescription drug through a mail
8 order program.

9 (b) Except as provided by Subsection (c), the [The] board of
10 trustees or a health benefit plan shall require that a participant
11 who chooses to obtain a prescription drug through a retail pharmacy
12 or other method other than by mail order pay a deductible,
13 copayment, coinsurance, or other cost-sharing obligation to cover
14 the additional cost of obtaining a prescription drug through that
15 method rather than by mail order.

16 (c) The board of trustees or a health benefit plan may not
17 require a participant who obtains a multiple-month supply of a
18 prescription drug from a retail pharmacy under Section 1560.003 to
19 pay a deductible, copayment, coinsurance, or other cost-sharing
20 obligation that differs from the amount the participant pays for a
21 multiple-month supply of that drug through a mail order program.

22 SECTION 5. Subtitle H, Title 8, Insurance Code, is amended
23 by adding Chapter 1560 to read as follows:

24 CHAPTER 1560. DELIVERY OF PRESCRIPTION DRUGS BY MAIL

25 Sec. 1560.001. DEFINITIONS. In this chapter:

26 (1) "Community retail pharmacy" means a pharmacy that
27 is licensed as a Class A pharmacy under Chapter 560, Occupations

1 Code.

2 (2) "Mail order pharmacy" means a pharmacy that is
3 licensed under Chapter 560, Occupations Code, and that primarily
4 delivers prescription drugs to an enrollee through the United
5 States Postal Service or a commercial delivery service.

6 Sec. 1560.002. APPLICABILITY OF CHAPTER. This chapter
7 applies only to a health benefit plan that provides benefits for
8 medical or surgical expenses incurred as a result of a health
9 condition, accident, or sickness, including an individual, group,
10 blanket, or franchise insurance policy or insurance agreement, a
11 group hospital service contract, or an individual or group evidence
12 of coverage or similar coverage document that is offered or
13 administered by:

14 (1) the Teacher Retirement System of Texas under
15 Chapter 1575 or 1579; or

16 (2) the Employees Retirement System of Texas under
17 Chapter 1551.

18 Sec. 1560.003. MULTIPLE-MONTH SUPPLY OF PRESCRIPTION DRUG.

19 (a) In this section, "multiple-month supply" means a supply for 60
20 or more days.

21 (b) Notwithstanding any other law, an issuer of a health
22 benefit plan that provides pharmacy benefits to enrollees must
23 allow an enrollee to obtain from a community retail pharmacy a
24 multiple-month supply of any prescription drug under the same terms
25 and conditions applicable when the prescription drug is obtained
26 from a mail order pharmacy, if the community retail pharmacy agrees
27 to accept reimbursement on exactly the same terms and conditions

1 that apply to a mail order pharmacy.

2 (c) This section does not require:

3 (1) the issuer of a health benefit plan to contract
4 with:

5 (A) a retail pharmacy that does not agree to
6 accept reimbursement on exactly the same terms and conditions that
7 apply to a mail order pharmacy; or

8 (B) more than one mail order pharmacy; or

9 (2) a community retail pharmacy to:

10 (A) provide a multiple-month supply of a
11 prescription drug under the same terms and conditions applicable
12 when the prescription drug is obtained from a mail order pharmacy;
13 or

14 (B) agree to accept reimbursement on exactly the
15 same terms and conditions that apply to a mail order pharmacy.

16 Sec. 1560.004. PRESCRIPTION DRUG REIMBURSEMENT RATES.

17 (a) An issuer of a health benefit plan that provides pharmacy
18 benefits to enrollees shall reimburse pharmacies participating in
19 the health plan using prescription drug reimbursement rates, for
20 both brand name and generic prescription drugs, that are based on a
21 current and nationally recognized benchmark index that includes
22 average wholesale price and maximum allowable cost.

23 (b) Regardless of whether a pharmacy is a mail order
24 pharmacy or a community retail pharmacy, an issuer of a health
25 benefit plan shall use the same benchmark index, including the same
26 average wholesale price, maximum allowable cost, and national
27 prescription drug codes, to reimburse all pharmacies participating

1 in the health benefit plan.

2 SECTION 6. Subchapter C, Chapter 1575, Insurance Code, is
3 amended by adding Section 1575.110 to read as follows:

4 Sec. 1575.110. PHARMACY BENEFIT MANAGER CONTRACTS. (a) In
5 awarding a contract to provide pharmacy benefit manager services
6 under this chapter, the trustee is not required to select the lowest
7 bid but must select a contract that meets the criteria established
8 by this section.

9 (b) The contract must state that:

10 (1) the trustee is entitled to audit the pharmacy
11 benefit manager to verify costs and discounts associated with drug
12 claims, pharmacy benefit manager compliance with contract
13 requirements, and services provided by subcontractors;

14 (2) the audit must be conducted by an independent
15 auditor in accordance with established auditing standards; and

16 (3) to conduct the audit, the trustee and the
17 independent auditor are entitled access to information related to
18 the services and the costs associated with the services performed
19 under the contract, including access to the pharmacy benefit
20 manager's facilities, records, contracts, medical records, and
21 agreements with subcontractors.

22 (c) The contract must define the information that the
23 pharmacy benefit manager is required to provide to the trustee
24 concerning the audit of the retail, independent, and mail order
25 pharmacies performing services under the contract and describe how
26 the results of these audits must be reported to the trustee,
27 including how often the results must be reported. The contract must

1 state whether the pharmacy benefit manager is required to return
2 recovered overpayments to the trustee.

3 (d) The contract must state that any audit of a mail order
4 pharmacy owned by the pharmacy benefit manager must be conducted by
5 an independent auditor selected by the trustee in accordance with
6 established auditing standards.

7 SECTION 7. Subchapter B, Chapter 1579, Insurance Code, is
8 amended by adding Section 1579.057 to read as follows:

9 Sec. 1579.057. PHARMACY BENEFIT MANAGER CONTRACTS. (a) In
10 awarding a contract to provide pharmacy benefit manager services
11 under this chapter, the trustee is not required to select the lowest
12 bid but must select a contract that meets the criteria established
13 by this section.

14 (b) The contract must state that:

15 (1) the trustee is entitled to audit the pharmacy
16 benefit manager to verify costs and discounts associated with drug
17 claims, pharmacy benefit manager compliance with contract
18 requirements, and services provided by subcontractors;

19 (2) the audit must be conducted by an independent
20 auditor in accordance with established auditing standards; and

21 (3) to conduct the audit, the trustee and the
22 independent auditor are entitled access to information related to
23 the services and the costs associated with the services performed
24 under the contract, including access to the pharmacy benefit
25 manager's facilities, records, contracts, medical records, and
26 agreements with subcontractors.

27 (c) The contract must define the information that the

1 pharmacy benefit manager is required to provide to the trustee
2 concerning the audit of the retail, independent, and mail order
3 pharmacies performing services under the contract and describe how
4 the results of these audits must be reported to the trustee,
5 including how often the results must be reported. The contract must
6 state whether the pharmacy benefit manager is required to return
7 recovered overpayments to the trustee.

8 (d) The contract must state that any audit of a mail order
9 pharmacy owned by the pharmacy benefit manager must be conducted by
10 an independent auditor selected by the trustee in accordance with
11 established auditing standards.

12 SECTION 8. Subchapter B, Chapter 1601, Insurance Code, is
13 amended by adding Section 1601.064 to read as follows:

14 Sec. 1601.064. PHARMACY BENEFIT MANAGER CONTRACTS. (a) In
15 awarding a contract to provide pharmacy benefit manager services
16 under this chapter, a system is not required to select the lowest
17 bid but must select a contract that meets the criteria established
18 by this section.

19 (b) The contract must state that:

20 (1) the system is entitled to audit the pharmacy
21 benefit manager to verify costs and discounts associated with drug
22 claims, pharmacy benefit manager compliance with contract
23 requirements, and services provided by subcontractors;

24 (2) the audit must be conducted by an independent
25 auditor in accordance with established auditing standards; and

26 (3) to conduct the audit, the system and the
27 independent auditor are entitled access to information related to

1 the services and the costs associated with the services performed
2 under the contract, including access to the pharmacy benefit
3 manager's facilities, records, contracts, medical records, and
4 agreements with subcontractors.

5 (c) The contract must define the information that the
6 pharmacy benefit manager is required to provide to the system
7 concerning the audit of the retail, independent, and mail order
8 pharmacies performing services under the contract and describe how
9 the results of these audits must be reported to the system,
10 including how often the results must be reported. The contract must
11 state whether the pharmacy benefit manager is required to return
12 recovered overpayments to the system.

13 (d) The contract must state that any audit of a mail order
14 pharmacy owned by the pharmacy benefit manager must be conducted by
15 an independent auditor selected by the system in accordance with
16 established auditing standards.

17 SECTION 9. Sections 1551.067, 1575.110, 1579.057, and
18 1601.064, Insurance Code, as added by this Act, apply only to a
19 contract with a pharmacy benefit manager executed or renewed on or
20 after the effective date of this Act.

21 SECTION 10. Chapter 1560, Insurance Code, as added by this
22 Act, and Section 1551.224, Insurance Code, as amended by this Act
23 apply only to a health benefit plan that is delivered, issued for
24 delivery, or renewed on or after January 1, 2010. A health benefit
25 plan that is delivered, issued for delivery, or renewed before
26 January 1, 2010, is covered by the law in effect at the time the
27 health benefit plan was delivered, issued for delivery, or renewed,

1 and that law is continued in effect for that purpose.

2 SECTION 11. This Act takes effect September 1, 2009.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 704 passed the Senate on April 22, 2009, by the following vote: Yeas 30, Nays 0; and that the Senate concurred in House amendments on May 30, 2009, by the following vote: Yeas 30, Nays 1.

Secretary of the Senate

I hereby certify that S.B. No. 704 passed the House, with amendments, on May 20, 2009, by the following vote: Yeas 134, Nays 0, three present not voting.

Chief Clerk of the House

Approved:

Date

Governor