

By: Muñoz, Jr.

H.B. No. 2618

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of third-party administrators, including pharmacy benefit managers; expanding the requirement of a certificate of authority to engage in an occupation; adding provisions subject to a criminal penalty.

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

SECTION 1. Section 4151.001, Insurance Code, is amended by amending Subdivisions (1), (2), and (4) and adding Subdivisions (3-a) and (5-a) to read as follows:

(1) "Administrator" means a person who, in connection with annuities or life benefits, health benefits, accident benefits, pharmacy benefits, or workers' compensation benefits, collects premiums or contributions from or adjusts or settles claims for residents of this state. Except as provided by Section 4151.0023, the ~~The~~ term includes a delegated entity under Chapter 1272 and a workers' compensation health care network authorized under Chapter 1305 that administers a workers' compensation claim for an insurer, including an insurer that establishes or contracts with the network to provide health care services. Except as provided by Section 4151.0023, the ~~The~~ term does not include a person described by Section 4151.002.

(2) "Insurer" means a person who engages in the business of life, health, accident, or workers' compensation insurance under the law of this state. For purposes of this chapter

1 only, the term also includes:

2 (A) an "insurance carrier," as defined by Section
3 401.011(27), Labor Code, other than a governmental entity or a
4 workers' compensation self-insurance group subject to regulation
5 under Chapter 407A, Labor Code; and

6 (B) an entity for whom a pharmacy benefit manager
7 acts as described by Section 4151.0023.

8 (3-a) "Pharmacy benefit management" means
9 administration or management of prescription drug benefits
10 provided by an insurer, including:

11 (A) retail pharmacy network management;

12 (B) pharmacy discount card management;

13 (C) claims payment to a retail pharmacy for
14 prescription medications dispensed to plan participants;

15 (D) clinical formulary development and
16 management services, including utilization management and quality
17 assurance programs;

18 (E) rebate contracting and administration;

19 (F) auditing contracted pharmacies;

20 (G) establishing pharmacy reimbursement pricing
21 and methodologies; and

22 (H) determining single- and multiple-source
23 medications.

24 (4) "Plan" means a plan, fund, or program established,
25 adopted, or maintained by a plan sponsor or insurer to the extent
26 that the plan, fund, or program is established, adopted, or
27 maintained to provide indemnification, ~~or~~ expense reimbursement,

1 or payment for any type of life, health, or accident benefit.

2 (5-a) "Retail pharmacy" means a pharmacy licensed
3 under Chapter 560, Occupations Code, that dispenses medications to
4 the public, including an independent pharmacy, a chain pharmacy, a
5 supermarket pharmacy, or a mass merchandiser pharmacy. The term
6 does not include a pharmacy that dispenses prescription medications
7 primarily through the mail, a nursing home pharmacy, a long-term
8 care facility pharmacy, a hospital pharmacy, a clinic pharmacy, a
9 charitable or nonprofit pharmacy, a government pharmacy, or a
10 pharmacy benefit manager that is serving in its capacity as a
11 pharmacy benefit manager.

12 SECTION 2. Section 4151.002, Insurance Code, is amended to
13 read as follows:

14 Sec. 4151.002. EXEMPTIONS. Except as provided by Section
15 4151.0023, a [A] person is not an administrator if the person is:

16 (1) an employer, other than a certified workers'
17 compensation self-insurer, administering an employee benefit plan
18 or the plan of an affiliated employer under common management and
19 control;

20 (2) a union administering a benefit plan on behalf of
21 its members;

22 (3) an insurer or a group hospital service corporation
23 subject to Chapter 842 acting with respect to a policy lawfully
24 issued and delivered by the insurer or corporation in and under the
25 law of a state in which the insurer or corporation was authorized to
26 engage in the business of insurance;

27 (4) a health maintenance organization that is

1 authorized to operate in this state under Chapter 843 with respect
2 to any activity that is specifically regulated under that chapter,
3 Chapter 1271, 1272, or 1367, Subchapter A, Chapter 1452, or
4 Subchapter B, Chapter 1507;

5 (5) an agent licensed under Subchapter B, Chapter
6 4051, Subchapter B, Chapter 4053, or Subchapter B, Chapter 4054,
7 who receives commissions as an agent and is acting:

8 (A) under appointment on behalf of an insurer
9 authorized to engage in the business of insurance in this state; and

10 (B) in the customary scope and duties of the
11 person's authority as an agent;

12 (6) a creditor acting on behalf of its debtor with
13 respect to insurance that covers a debt between the creditor and its
14 debtor, if the creditor performs only the functions of a group
15 policyholder or a creditor;

16 (7) a trust established in conformity with 29 U.S.C.
17 Section 186 or a trustee or employee who is acting under the trust;

18 (8) a trust that is exempt from taxation under Section
19 501(a), Internal Revenue Code of 1986, or a trustee or employee
20 acting under the trust;

21 (9) a custodian or a custodian's agent or employee who
22 is acting under a custodian account that complies with Section
23 401(f), Internal Revenue Code of 1986;

24 (10) a bank, credit union, savings and loan
25 association, or other financial institution that is subject to
26 supervision or examination under federal or state law by a federal
27 or state regulatory authority, if the institution is performing

1 only those functions for which the institution holds a license
2 under federal or state law;

3 (11) a company that advances and collects a premium or
4 charge from its credit card holders on their authorization, if the
5 company does not adjust or settle claims and acts only in the
6 company's debtor-creditor relationship with its credit card
7 holders;

8 (12) a person who adjusts or settles claims in the
9 normal course of the person's practice or employment as a licensed
10 attorney and who does not collect any premium or charge in
11 connection with annuities or with life, health, accident, pharmacy,
12 or workers' compensation benefits;

13 (13) an adjuster licensed under Subtitle C by the
14 department who is engaged in the performance of the individual's
15 powers and duties as an adjuster in the scope of the individual's
16 license;

17 (14) a person who provides technical, advisory,
18 utilization review, precertification, or consulting services to an
19 insurer, plan, or plan sponsor but does not make any management or
20 discretionary decisions on behalf of the insurer, plan, or plan
21 sponsor;

22 (15) an attorney in fact for a Lloyd's plan operating
23 under Chapter 941 or for a reciprocal or interinsurance exchange
24 operating under Chapter 942 who is acting in the capacity of
25 attorney in fact under the applicable chapter;

26 (16) a joint fund, risk management pool, or
27 self-insurance pool composed of political subdivisions of this

1 state that participate in a fund or pool through interlocal
2 agreements, any nonprofit administrative agency or governing body
3 or other nonprofit entity that acts solely on behalf of a fund,
4 pool, agency, or body, or any other fund, pool, agency, or body
5 established under or for the purpose of implementing an interlocal
6 governmental agreement;

7 (17) a self-insured political subdivision;

8 (18) a plan under which insurance benefits are
9 provided exclusively by an insurer authorized to engage in the
10 business of insurance in this state and the administrator of which
11 is:

12 (A) a full-time employee of the plan's organizing
13 or sponsoring association, trust, or other entity; or

14 (B) a trustee of the organizing or sponsoring
15 trust;

16 (19) a parent of a wholly owned direct or indirect
17 subsidiary insurer authorized to engage in the business of
18 insurance in this state or a wholly owned direct or indirect
19 subsidiary insurer that is a part of the parent's holding company
20 system that, under an agreement regulated and approved under
21 Chapter 823 or a similar statute of the domiciliary state if the
22 parent or subsidiary insurer is a foreign insurer engaged in
23 business in this state, on behalf of only itself or an affiliated
24 insurer:

25 (A) collects premiums or contributions, if the
26 parent or subsidiary insurer:

27 (i) prepares only billing statements and

1 places those statements in the United States mail; and

2 (ii) causes all collected premiums to be
3 deposited directly in a depository account of the particular
4 affiliated insurer; or

5 (B) furnishes proof-of-loss forms, reviews
6 claims, determines the amount of the liability for those claims,
7 and negotiates settlements, if the parent or subsidiary insurer
8 pays claims only from the funds of the particular subsidiary by
9 checks or drafts of that subsidiary; or

10 (20) an affiliate, as described by Section ~~[Chapter]~~
11 823.003, of a self-insurer certified under Chapter 407, Labor Code,
12 and who:

13 (A) is performing the acts of an administrator on
14 behalf of that certified self-insurer; and

15 (B) directly or indirectly through one or more
16 intermediaries, controls, is controlled by, or is under common
17 control with that certified self-insurer, as the term "control" is
18 described by Section 823.005.

19 SECTION 3. Subchapter A, Chapter 4151, Insurance Code, is
20 amended by adding Section 4151.0023 to read as follows:

21 Sec. 4151.0023. CHAPTER APPLICABILITY TO PHARMACY BENEFIT
22 MANAGERS; EXCEPTIONS. (a) Notwithstanding any other law, this
23 chapter applies to a person, other than a pharmacist or pharmacy,
24 who collects premium or contributions from or adjusts or settles
25 claims for residents of this state with respect to pharmacy
26 benefits provided by an entity that issues or provides a plan that
27 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;

(3) a fraternal benefit society operating under Chapter 885;

(4) a stipulated premium company operating under Chapter 884;

(5) an exchange operating under Chapter 942;

(6) a health maintenance organization operating under Chapter 843;

(7) a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846; or

(8) an approved nonprofit health corporation that holds a certificate of authority under Chapter 844.

(b) This chapter applies to a pharmacy benefit manager that provides pharmacy benefit management with respect to pharmacy benefits provided by the provider or issuer of a plan of group health coverage made available by a school district in accordance with Section 22.004, Education Code.

(c) Notwithstanding Section 172.014, Local Government Code, or any other law, this chapter applies to a pharmacy benefit manager that provides pharmacy benefit management with respect to pharmacy

benefits provided by a risk pool created under Chapter 172, Local Government Code, that provides health and accident coverage.

(d) Notwithstanding any provision in Chapter 1551, 1575, 1579, or 1601 or any other law, this chapter applies to a pharmacy benefit manager that provides pharmacy benefit management with respect to pharmacy benefits provided by the provider or issuer of:

(1) a basic coverage plan under Chapter 1551;

(2) a basic plan under Chapter 1575;

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

and

(4) a plan that provides basic coverage under Chapter 1601.

(e) Notwithstanding Section 1501.251 or any other law, this chapter applies to a pharmacy benefit manager that provides pharmacy benefit management with respect to pharmacy benefits provided by the issuer of coverage under a small employer health benefit plan subject to Chapter 1501.

(f) To the extent allowed by federal law, this chapter applies to a pharmacy benefit manager that provides pharmacy benefit management with respect to pharmacy benefits provided by the state Medicaid program, except that this chapter does not apply to a managed care organization subject to Section 533.005, Government Code.

(g) This chapter does not apply to a pharmacy benefit manager with respect to pharmacy benefits provided by:

(1) a plan that provides coverage:

(A) for wages or payments in lieu of wages for a

period during which an employee is absent from work because of sickness or injury;

(B) as a supplement to a liability insurance policy;

(C) for credit insurance;

(D) only for dental or vision care;

(E) only for hospital expenses; or

(F) only for indemnity for hospital confinement;

(2) a Medicare supplemental policy as defined by Section 1882(g)(1), Social Security Act (42 U.S.C. Section 1395ss);

(3) a workers' compensation insurance policy or any other plan or arrangement that provides workers' compensation benefits;

(4) medical payment insurance coverage provided under a motor vehicle insurance policy; or

(5) a long-term care policy, including a nursing home fixed indemnity policy, unless the commissioner determines that the policy provides benefit coverage so comprehensive that the policy is a health benefit plan as described by Subsections (a)-(f).

(h) Notwithstanding any other law, a person described by Subsections (a)-(g) is an administrator subject to this chapter and must obtain a certificate of authority under Subchapter B.

SECTION 4. The heading to Subchapter D, Chapter 4151, Insurance Code, is amended to read as follows:

SUBCHAPTER D. PHARMACY BENEFITS [~~BENEFIT PLANS~~]

SECTION 5. Subchapter D, Chapter 4151, Insurance Code, is amended by amending Section 4151.151 and adding Sections 4151.154,

1 4151.155, 4151.156, 4151.157, 4151.158, and 4151.159 to read as
2 follows:

3 Sec. 4151.151. DEFINITION. In this subchapter, "pharmacy
4 benefit manager" means a person, other than a pharmacy or
5 pharmacist, who acts as an administrator who provides pharmacy
6 benefit management in connection with pharmacy benefits.

7 Sec. 4151.154. AMENDMENT OF CONTRACT TERM. A pharmacy
8 benefit manager may not change a term of a contract with a retail
9 pharmacy, including automatically enrolling or disenrolling the
10 pharmacy from a pharmacy benefit network, without prior written
11 agreement of the retail pharmacy.

12 Sec. 4151.155. CERTAIN TRANSACTION FEES PROHIBITED. A
13 pharmacy benefit manager may not charge a transaction fee for a
14 claim submitted electronically to the pharmacy benefit manager by a
15 retail pharmacy.

16 Sec. 4151.156. PHARMACY NETWORK REQUIREMENTS AND
17 PROHIBITIONS. (a) A pharmacy benefit manager may not require that
18 a retail pharmacy be a member of a network managed by the pharmacy
19 benefit manager as a condition for the retail pharmacy to
20 participate in another network managed by the pharmacy benefit
21 manager.

22 (b) A pharmacy benefit manager may not exclude a retail
23 pharmacy from participation in a network if the pharmacy:

24 (1) accepts the terms, conditions, and reimbursement
25 rates of the pharmacy benefit manager;

26 (2) meets all applicable federal and state licensure
27 and permit requirements; and

1 (3) has not been excluded from participation as a
2 provider in any federal or state program.

3 (c) A pharmacy benefit manager shall establish a pharmacy
4 network that includes sufficient retail pharmacies to ensure that:

5 (1) in urban areas, not less than 90 percent of plan
6 participants, on average, live not more than two miles from a
7 network retail pharmacy;

8 (2) in suburban areas, not less than 90 percent of plan
9 participants, on average, live not more than five miles from a
10 network retail pharmacy; and

11 (3) in rural areas, not less than 70 percent of plan
12 participants, on average, live not more than 15 miles from a network
13 retail pharmacy.

14 Sec. 4151.157. RELATIONSHIP WITH PLAN PARTICIPANTS. A
15 pharmacy benefit manager may not:

16 (1) require that a plan participant use a retail
17 pharmacy, mail order pharmacy, specialty pharmacy, or other entity
18 providing pharmacy services:

19 (A) in which the pharmacy benefit manager has an
20 ownership interest; or

21 (B) that has an ownership interest in the
22 pharmacy benefit manager; or

23 (2) provide an incentive to a plan participant to
24 encourage the plan participant to use a retail pharmacy, mail order
25 pharmacy, specialty pharmacy, or other entity providing pharmacy
26 services:

27 (A) in which the pharmacy benefit manager has an

1 ownership interest; or

2 (B) that has an ownership interest in the
3 pharmacy benefit manager.

4 Sec. 4151.158. SALE, RENTAL, OR LEASING OF CLAIMS DATA. (a)
5 Not later than the 30th day before the date a pharmacy benefit
6 manager intends to sell, rent, or lease an insurer's claims data,
7 the pharmacy benefit manager shall disclose in writing to the
8 insurer that the pharmacy benefit manager intends to sell, rent, or
9 lease the claims data. The written disclosure must identify the
10 potential purchaser and the expected use of the data.

11 (b) A pharmacy benefit manager may not sell, rent, or lease
12 claims data without the written approval of the insurer.

13 (c) A pharmacy benefit manager must allow each plan
14 participant to refuse the sale, rent, or lease of that plan
15 participant's claims data.

16 Sec. 4151.159. TRANSMISSION OF CLAIMS DATA AND CERTAIN
17 OTHER INFORMATION PROHIBITED. A pharmacy benefit manager may not
18 transmit a plan participant's personally identifiable utilization
19 or claims data to a pharmacy owned by the pharmacy benefit manager
20 unless before each transmission the plan participant consents in
21 writing to the transmission.

22 SECTION 6. The change in law made by this Act applies only
23 to a contract between a pharmacy benefit manager and a retail
24 pharmacy entered into or renewed on or after January 1, 2016. A
25 contract entered into or renewed before January 1, 2016, is
26 governed by the law as it existed immediately before the effective
27 date of this Act, and that law is continued in effect for that

1 purpose.

2 SECTION 7. Unless required to register as an administrator
3 under Chapter 4151, Insurance Code, before the effective date of
4 this Act, an entity acting as, or holding itself out as, a pharmacy
5 benefit manager for purposes of that chapter as amended by this Act
6 is not required to hold a certificate of authority under that
7 chapter before January 1, 2016.

8 SECTION 8. This Act takes effect September 1, 2015.