

SUBJECT: Prohibiting certain actions by health plans and pharmacy benefit managers

COMMITTEE: Insurance — committee substitute recommended

VOTE: 7 ayes — Oliverson, Vo, J. González, Hull, Middleton, Paul, Sanford

2 nays — Israel, Romero

WITNESSES: For — John Rogers, Rogers Pharmacies; Debbie Garza, Texas Pharmacy Association; Miguel Rodriguez, Texas Pharmacy Business Council; (*Registered, but did not testify*: Chase Bearden and Dennis Borel, Coalition of Texans with Disabilities; Leticia Van de Putte, Davila Pharmacy; Nicole Kralj, National Association of Chain Drug Stores; Clayton Stewart, Texas Medical Association; Michael Wright, Texas Pharmacy Business Council; Bonnie Bruce, Texas Society of Anesthesiologists; KeShana Odom, Texas Society of Health-System Pharmacy)

Against — Melodie Shrader, PCMA; Jamie Dudensing, Texas Association of Health Plans; (*Registered, but did not testify*: Patricia Kolodzey, Blue Cross Blue Shield of Texas; Bill Hammond, Texas Employers for Insurance Reform)

On — Jenny Blakey, Office of Public Insurance Counsel; (*Registered, but did not testify*: Luke Bellsnyder, Texas Department of Insurance)

DIGEST: CSHB 1919 would prohibit a health benefit plan issuer and provider and pharmacy benefit manager from taking certain actions regarding patient and prescriber records and certain communications, referrals, and solicitations.

Definitions. "Affiliated provider" would mean a pharmacy or durable medical equipment provider that directly or indirectly controlled, was controlled by, or was under common control with a health plan issuer or pharmacy benefit manager (PBM).

"Commercial purpose" would not include pharmacy reimbursement, formulary compliance, pharmaceutical care, utilization review by a health care provider, or a public health activity authorized by law.

Patient records. Under the bill, a health plan issuer or provider benefit manager could not transfer to or receive from the issuer's or manager's affiliated provider a record containing patient- or prescriber-identifiable prescription information for a commercial purpose.

Communication. A health plan issuer or PBM could not steer or direct a patient to use the issuer's or manager's affiliated provider through any oral or written communication, including online messaging regarding the provider or patient- or prospective patient-specific advertising of the provider.

The bill would not prohibit a health plan issuer or PBM from including an affiliated provider in a patient or prospective patient communication if the communication involved certain information about network pharmacy and durable medical equipment provider costs and services.

Referrals and solicitations. The bill would prohibit a health plan issuer or PBM from requiring a patient to use an affiliated provider in order for the patient to receive the maximum benefit for the service under the patient's health plan.

A health plan issuer or PBM could not offer or implement a health plan that required or induced a patient to use an affiliated provider, including by providing for reduced cost-sharing if the patient used the affiliated provider. A health plan issuer or PBM also could not solicit a patient or prescriber to transfer a patient prescription to the issuer's or manager's affiliated provider or require a non-affiliated provider to transfer a patient's prescription to the issuer's or manager's affiliated provider without the prior written consent of the patient.

The bill would take effect September 1, 2021, and would apply only to a health plan issued or renewed on or after the effective date.

**SUPPORTERS
SAY:**

CSHB 1919 would increase transparency among insurers, pharmacy benefit managers (PBMs), and their affiliated pharmacies and would protect and enable patients to use their pharmacy of choice. The bill also would prohibit certain health data from being shared with PBMs for marketing and steering, also known as certain referral practices.

Consolidation in the pharmacy benefits and health insurance industries has concentrated control of pharmacy benefits into a few conglomerates. Recent surveys indicate that many patients have had their prescriptions transferred to PBM-affiliated pharmacies without the patient's knowledge or consent. These referral practices represent a conflict of interest and decrease both transparency and competition in the health care market. Steering patients to certain pharmacies also can increase health care costs while harming patient care, especially in rural and medically underserved areas. The bill is needed to protect patients' choices.

**CRITICS
SAY:**

CSHB 1919 could undermine important tools health plans and pharmacy benefit managers use to control health care costs and would decrease access to certain patient and provider information. The bill could increase costs by prohibiting health plans from offering the lowest possible cost options to enrollees. By requiring prior written consent to transfer a prescription to a different pharmacy, the bill also would make it more challenging for consumers to shop around and change pharmacies. Also, placing restrictions on health plans and pharmacy benefit managers would primarily benefit independent pharmacies, many of which already have significant negotiation power through pharmacy services administrative organizations.