

HB 1763 by Oliverson, Ashby, Bell, Burns, Guerra, Hefner, Holland, Johnson, Lozano, Lucio III, Middleton, Morales, Raymond, Raney, Spiller & Toth

CSSB 528 by Hughes, Bettencourt, Birdwell, Blanco, Buckingham, Campbell, Creighton, Gutierrez, Hall, Hinojosa, Huffman, Kolkhorst, Lucio, Menendez, Miles, Nelson, Nichols, Paxton, Perry, Powell, Schwertner, Seliger, Springer, West & Zaffirini

Support Protection of Patient & Pharmacy Rights

Issue Background

Pharmacy Benefit Managers (PBMs) engage in multiple practices that create barriers to fair competition for community pharmacies and impede their ability to care for patients. PBMs levy retroactive fees against pharmacies to level PBM costs or to penalize pharmacies for not reaching unrealistic performance measures. They frequently require pharmacies to attain excessive credentialing or certifications. They pay their own affiliate pharmacies more than they reimburse other pharmacies for the same services and often forbid pharmacy mail or delivery services while requiring patients to use a PBM-owned mail-order pharmacy.

PBMs often have challenged state laws in court on the grounds that such laws violate provisions of the Employee Retirement Income Security Act of 1974 (ERISA). However, the U.S. Supreme Court ruled in December in *Rutledge v. PCMA* that an Arkansas PBM reform law is not pre-empted by ERISA.

HB 1763 passed the House April 27 on a 147-0 vote and was reported favorably from Senate Business & Commerce on a 7-vote on May 10.

HB 1763 creates Subchapter L in Chapter 1369 of the Insurance Code with these provisions:

- PBMs may not assess any retroactive fees or payment reductions against a pharmacy except as the result of a legitimate audit outcome. PBMs may retroactively increase pharmacy payments on the basis of performance incentives.
- A PBM may not reimburse a PBM-affiliated pharmacy at a higher rate than it reimburses a non-affiliated pharmacy for providing the same product or service.
- PBMs must provide an easily accessible fee schedule that specifies each service or procedure a pharmacy may deliver and the corresponding payment amount, and the methodology for calculating those payments. A PBM is deemed to satisfy the requirement if the information is included in the contract.
- A health plan or PBM may not prohibit a pharmacist or pharmacy belonging to a pharmacy services administration organization (PSAO) from receiving a copy of any contract provisions applicable to the pharmacy/pharmacist that the PSAO executes with a health plan or PBM.
- As permitted by law, PBMs must allow pharmacies to deliver or mail drugs to patients on request and to charge a fee for that service, if the pharmacy informs a patient before delivery the fee will be charged and that it may not be reimbursable by the patient's health plan or PBM. A PBM may prohibit a pharmacy suspected of fraud from mailing prescriptions to its patients.
- A health plan or PBM may not require a pharmacy to meet accreditation or certification standards exceeding federal/state standards. A PBM or health plan may not prohibit a pharmacy from dispensing any drug it is allowed to dispense under state/federal law unless its manufacturer requires specific certifications or credentials the pharmacy does not have.
- A PBM cannot retaliate against a pharmacy for exercising any rights or remedy allowed under this bill. A PBM's response to an allegation of fraud shall not be deemed to be retaliation against a pharmacy.



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