

By: Smithee

H. B. No. 1405

A BILL TO BE ENTITLED

# 1 AN ACT

2 relating to provision by a health benefit plan of prescription drug  
3 coverage specified by formulary.

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

5 SECTION 1. Section 1369.051(2), Insurance Code, is amended  
6 to read as follows:

9 SECTION 2. Section 1369.052, Insurance Code, is amended to  
10 read as follows:

11 Sec. 1369.052. APPLICABILITY OF SUBCHAPTER. This  
12 subchapter applies only to a [group] health benefit plan that  
13 provides benefits for medical or surgical expenses incurred as a  
14 result of a health condition, accident, or sickness, including an  
15 individual, [a] group, blanket, or franchise insurance policy or  
16 insurance agreement, a group hospital service contract, or a small  
17 or large employer group contract or similar coverage document that  
18 is offered by:

19 (1) an insurance company;

20 (2) a group hospital service corporation operating  
21 under Chapter 842;

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

24 (4) a stipulated premium company operating under

1 Chapter 884;

2 (5) a reciprocal exchange operating under Chapter 942;

3 (6) a health maintenance organization operating under

4 Chapter 843;

5 (7) a multiple employer welfare arrangement that holds

6 a certificate of authority under Chapter 846; or

7 (8) an approved nonprofit health corporation that

8 holds a certificate of authority under Chapter 844.

9 SECTION 3. Section 1369.053, Insurance Code, is amended to  
10 read as follows:

11 Sec. 1369.053. EXCEPTION. This subchapter does not apply  
12 to:

13 (1) a health benefit plan that provides coverage:  
14 (A) only for a specified disease or for another  
15 single benefit;  
16 (B) only for accidental death or dismemberment;  
17 (C) for wages or payments in lieu of wages for a  
18 period during which an employee is absent from work because of  
19 sickness or injury;  
20 (D) as a supplement to a liability insurance  
21 policy;

22 (E) for credit insurance;  
23 (F) only for dental or vision care;  
24 (G) only for hospital expenses; or  
25 (H) only for indemnity for hospital confinement;

26 (2) ~~[a small employer health benefit plan written~~  
27 ~~under Chapter 1501;~~

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

4                   (3) [~~(4)~~] a workers' compensation insurance policy;

5                   (4) [~~(5)~~] medical payment insurance coverage provided  
6 under a motor vehicle insurance policy; or

7                   (5) [~~(6)~~] a long-term care insurance policy, including  
8 a nursing home fixed indemnity policy, unless the commissioner  
9 determines that the policy provides benefit coverage so  
10 comprehensive that the policy is a health benefit plan as described  
11 by Section 1369.052.

12                  SECTION 4. Section 1369.054, Insurance Code, is amended to  
13 read as follows:

14                  Sec. 1369.054. NOTICE AND DISCLOSURE OF CERTAIN INFORMATION  
15 REQUIRED. An issuer of a [~~group~~] health benefit plan that covers  
16 prescription drugs and uses one or more drug formularies to specify  
17 the prescription drugs covered under the plan shall:

18                  (1) provide in plain language in the coverage  
19 documentation provided to each enrollee:

20                  (A) notice that the plan uses one or more drug  
21 formularies;

22                  (B) an explanation of what a drug formulary is;

23                  (C) a statement regarding the method the issuer  
24 uses to determine the prescription drugs to be included in or  
25 excluded from a drug formulary;

26                  (D) a statement of how often the issuer reviews  
27 the contents of each drug formulary; and

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1 (E) notice that an enrollee may contact the  
2 issuer to determine whether a specific drug is included in a  
3 particular drug formulary;

4 (2) disclose to an individual on request, not later  
5 than the third business day after the date of the request, whether a  
6 specific drug is included in a particular drug formulary; and

7 (3) notify an enrollee and any other individual who  
8 requests information under this section that the inclusion of a  
9 drug in a drug formulary does not guarantee that an enrollee's  
10 health care provider will prescribe that drug for a particular  
11 medical condition or mental illness.

12 SECTION 5. Section 1369.055, Insurance Code, is amended to  
13 read as follows:

14 Sec. 1369.055. CONTINUATION OF COVERAGE REQUIRED; OTHER  
15 DRUGS NOT PRECLUDED. (a) An issuer of a [group] health benefit plan  
16 that covers prescription drugs shall offer to each enrollee at the  
17 contracted benefit level and until the enrollee's plan renewal date  
18 any prescription drug that was approved or covered under the plan  
19 for a medical condition or mental illness, regardless of whether  
20 the drug has been removed from the health benefit plan's drug  
21 formulary before the plan renewal date.

22 (b) This section does not prohibit a physician or other  
23 health professional who is authorized to prescribe a drug from  
24 prescribing a drug that is an alternative to a drug for which  
25 continuation of coverage is required under Subsection (a) if the  
26 alternative drug is:

27 (1) covered under the [group] health benefit plan; and

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1 (2) medically appropriate for the enrollee.

2 SECTION 6. Section 1369.056(a), Insurance Code, is amended  
3 to read as follows:

4 (a) The refusal of a [group] health benefit plan issuer to  
5 provide benefits to an enrollee for a prescription drug is an  
6 adverse determination for purposes of Section 4201.002 if:

11 SECTION 7. The change in law made by this Act applies only  
12 to a health benefit plan delivered, issued for delivery, or renewed  
13 on or after January 1, 2012. A health benefit plan delivered,  
14 issued for delivery, or renewed before January 1, 2012, is governed  
15 by the law in effect immediately before the effective date of this  
16 Act, and that law is continued in effect for that purpose.

17 SECTION 8. This Act takes effect September 1, 2011.