

**HB 1919 by Harris, Holland, Lambert, E. Morales, Patterson & Raney
By Schwertner, Buckingham, Hughes, Kolkhorst, Perry & Springer**

Steering of Pharmacy Patients by PBMs & Health Plans

Issue Background

Consolidation in the pharmacy benefits and health insurance industries has concentrated control of pharmacy benefits in the hands of a few huge conglomerates. Pharmacy Benefits Managers CVS Caremark, Express Scripts and Optum Rx collectively manage 76% of the pharmacy benefits market, and their control has increased with CVS Caremark's merger with insurer Aetna and insurer UnitedHealth Group's acquisition of Optum Rx. **In a September survey of pharmacies conducted by the National Community Pharmacists Assn., 79% of respondents reported having patients whose prescriptions were transferred to PBM competitor pharmacies without their knowledge or consent. The median number of patients lost to such "steering" over six months was 12.**

Steering of patients to PBM-owned retail and specialty pharmacies has increased as the new conglomerates use both their PBM and health insurance arms to "refer" patients to their own mail-order, retail and specialty pharmacies. These "referral" practices represent a conflict of interest and decrease both transparency and competition in the health services market. Steering also can increase health-care costs while harming patient care, especially in rural and medically underserved areas of Texas. **Legislation is needed to increase transparency into the relationships between insurers, PBMs and their affiliated pharmacies; to protect the right of pharmacy patients to use their pharmacy of choice; and to safeguard private health data from being shared with PBMs for purposes of marketing and steering.**

HB 1919 amends Chapter 1369 of the Texas Insurance Code with the following provisions:

- The bill defines what a PBM-affiliated pharmacy is and the activities that constitute an impermissible referral of a patient, such as ordering or influencing a patient to use a PBM-affiliated pharmacy.
- A PBM cannot transfer or share prescription records containing patient- and/or prescriber-identifiable data with any PBM-affiliated pharmacy, except for purposes of reimbursement, formulary compliance, pharmacy care, public health activities otherwise authorized by law, or utilization review by a health-care provider.
- A PBM cannot accept from an affiliated pharmacy the transfer of prescription records containing patient- and/or prescriber-identifiable data.
- A PBM is prohibited from attempting to require a patient to select an affiliate pharmacy or influencing a patient to select an affiliated pharmacy through any oral or written communication, including online messaging or any patient-specific advertising, marketing, or promotion.
- All PBMs operating in Texas must file an annual disclosure statement with the Texas Dept. of Insurance (TDI) identifying all their affiliated pharmacies. TDI would be required to provide PBMs the disclosure form needed to comply with this provision by Dec. 1, 2021.
- The provisions of the bill do not apply to hospitals or to referrals for pharmacy services and prescriptions for patients in skilled nursing facilities, intermediate care facilities, continuing care retirement communities, home health or hospices.
- The bill applies only to PBM activities on or after Jan. 1, 2022.

