

# Texas Prescription Drug Legislation

## H.B. No. 3388

### Article 1

Article 1 of House Bill 3388 states that the Texas Health and Human Services Commission (HHSC) will provide outpatient prescription drug benefits through a vendor program using a “transparent fee-for-service delivery model” for people receiving benefits under Medicaid, child health care programs, kidney health care programs, and any other benefits program administered by the HHSC that provides prescription drug benefits.

It also outlines that the HHSC will eliminate any obligation to pay fees included in the capitation rate or any other amounts paid to managed care organizations (MCOs) that are associated with prescription drug benefits. These include the guaranteed risk margin and insurance provider fees imposed by the federal Patient Protection and Affordable Care Act. If the HHSC contracts with a prescription drug benefits administrator, they will pay the administrator only for the reimbursement of any prescribed drug and the contracted administration fee.

Furthermore, the HHSC will consistently apply clinical prior authorization requirements statewide, use prior authorizations to control unnecessary utilization, ensure the preferred drug list is not disadvantaged, maintain drug utilization reviews, and coordinate data exchange under existing data warehouse and enterprise data resources.

Under House Bill 3388 the HHSC is not allowed to prohibit, limit, or interfere with a person's selection of a pharmacy or pharmacist by imposing different copayments if the provider agrees to comply with the financial terms of the program. They will also include mail-order pharmacies in the state's network of pharmacy providers but will not require the use of a mail-order pharmacy or charge more if a person opts to use a mail-order pharmacy.

The HHSC must amend any contracts with MCOs before the effective date of the bill to prohibit the organization from providing prescription drug benefits. MCOs have 180 days after the commission begins providing prescription drug benefits to cease providing pharmacy benefit plans.

### Article 2

Article 2 of House Bill 3388 amends/repeals the appropriate Government Codes to cease the delivery of prescription drugs benefits by MCOs. These sections include: Government Code 533.012(a), 531.0697, 533.003(b), and 533.056 as well as Human Resources Code 32.073(c).

### Article 3

Article 3 states that the act would take effect on September 1<sup>st</sup> of 2019.

## H.B. No. 3401

House Bill 3401 includes all of House Bill 3388 but also makes the following additions:

### Article 3

Article Three of House Bill 3401 amends Insurance Codes 222.001, 222.002, 222.003, 222.004 (b), 222.005 (a) and (c), 222.007 (a), and 222.008

**222.001 (a) and (a-1):** The amendment adds prescription drug benefit administrators to the list of entities subject to taxation under section 222.002

**222.002 (a), (c), and (b-1):** The amendment states that a prescription drug benefit administrator's taxable gross revenues are equal to the total gross amount of administrative fees and other consideration received by the prescription drug benefit administrator within a calendar year of the beginning of their contract.

**222.003 (d):** The amendment outlines the rate of tax imposed on a prescription drug benefit administrator.

- 0.875% of the first \$450,000 of taxable gross revenue received during a calendar year
- 1.75% of the remaining taxable gross revenues received during that calendar year

**222.004 (b):** The amendment adds prescription drug benefit administrators, stating that if they have a net tax liability for the previous calendar year of more than \$1,000 that they must make semiannual payments of tax on March 1<sup>st</sup> and August 1<sup>st</sup> for 50% of what is owed. If they do not pay, the tax paid on each date must be equal to the tax that would be owed on the aggregate of the taxable gross premiums or taxable gross revenues for the two previous calendar quarters.

**222.005 (a) and (c):** The amendment states that prescription drug benefit administrators must file annually with the comptroller. The comptroller may require the prescription drug benefit administrator to provide any addition relevant information that is reasonably necessary to verify the amount of tax due.

**222.007 (a):** The amendment entitles prescription drug benefit administrators to a credit on the amount of tax due for all examination and evaluation fees paid to this state during the calendar year for which the tax is due.

**222.008:** The amendment states that prescription drug benefit administrators that fail to pay all taxes imposed by this chapter are subject to Section 203.002 which allows the comptroller to institute a collection action as they consider appropriate.

## Article 4

Article 4 states that the Act would take effect September 1<sup>st</sup>, 2019 except for Article 3 which would take effect January 1<sup>st</sup>, 2020.