

BILL ANALYSIS

S.B. 332
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Insurance
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Interested parties note that health plans hire pharmacy benefit managers to administer pharmacy benefits for insured patients, develop provider networks, and process pharmacy claims. Each pharmacy benefit manager uses its own formula based on maximum allowable cost (MAC) to reimburse pharmacies for dispensing generic medications. However, the parties explain, there is no transparency in the method by which a pharmacy benefit manager determines which drugs will be reimbursed using a MAC formula, what the price will be, when the price will change, and what sources are used to determine MAC prices. The parties contend that this lack of transparency creates major challenges for pharmacies and note that recent legislation enhanced the transparency of MAC pricing in Medicaid managed care. S.B. 332 seeks to provide similar transparency protections in the commercial insurance market.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

S.B. 332 amends the Insurance Code to prohibit a health benefit plan issuer or pharmacy benefit manager from including a drug on a maximum allowable cost list unless the following conditions apply: the drug is not obsolete, the drug is generally available for purchase by pharmacists and pharmacies in Texas from a national or regional wholesaler, and the drug has an "A" or "B" rating in the most recent version of the U.S. Food and Drug Administration's (FDA) Approved Drug Products with Therapeutic Equivalence Evaluations, also known as the Orange Book, or is rated "NR" or "NA" or has a similar rating by a nationally recognized reference.

S.B. 332 restricts a health benefit plan issuer or pharmacy benefit manager, in formulating the maximum allowable cost price for a drug, to only using the price of that drug and any drug listed as therapeutically equivalent to that drug in the most recent version of the FDA's Approved Drug Products with Therapeutic Equivalence Evaluations. The bill authorizes a health benefit plan issuer or pharmacy benefit manager, if a therapeutically equivalent generic drug is unavailable or has limited market presence, to place on a maximum allowable cost list a drug that has a "B" rating in the most recent version of the FDA's Approved Drug Products with Therapeutic Equivalence Evaluations or an "NR" or "NA" rating or a similar rating by a nationally recognized reference. The bill requires a health benefit plan issuer or pharmacy benefit manager to disclose to a pharmacist or pharmacy the sources of the pricing data used in formulating maximum allowable cost prices on the date the health benefit plan issuer or pharmacy benefit

manager enters into the contract with the pharmacist or pharmacy. The bill also requires such information to be disclosed after that contract date on the request of the pharmacist or pharmacy.

S.B. 332 requires a health benefit plan issuer or pharmacy benefit manager to establish a process that will in a timely manner eliminate drugs from maximum allowable cost lists or modify maximum allowable cost prices to remain consistent with changes in pricing data used in formulating maximum allowable cost prices and product availability. The bill requires a health benefit plan issuer or pharmacy benefit manager to review and update maximum allowable cost price information for each drug at least once every seven days to reflect any modification of maximum allowable cost pricing. The bill requires a health benefit plan issuer or pharmacy benefit manager to provide to each pharmacist or pharmacy under contract with the health benefit plan issuer or pharmacy benefit manager a process to readily access the maximum allowable cost list that applies to the pharmacist or pharmacy.

S.B. 332 requires a health benefit plan issuer or pharmacy benefit manager to provide in the contract with each pharmacist or pharmacy a procedure for the pharmacist or pharmacy to appeal a maximum allowable cost price of a drug on or before the 10th day after the date a pharmacy benefit claim for the drug is made. The bill requires the health benefit plan issuer or pharmacy benefit manager to respond to such an appeal in a documented communication not later than the 10th day after the date the appeal is received by the health benefit plan issuer or pharmacy benefit manager.

S.B. 332 requires the health benefit plan issuer or pharmacy benefit manager, if the appeal of a drug's maximum allowable cost price is successful, to adjust the maximum allowable cost price that is the subject of the appeal effective on the day after the date the appeal is decided, to apply the adjusted maximum allowable cost price to all similarly situated pharmacists and pharmacies as determined by the health benefit plan issuer or pharmacy benefit manager, and to allow the pharmacist or pharmacy that succeeded in the appeal to reverse and rebill the pharmacy benefit claim giving rise to the appeal. If the appeal is not successful, the bill requires the health benefit plan issuer or pharmacy benefit manager to disclose to the pharmacist or pharmacy each reason the appeal is denied and the national drug code number from the national or regional wholesalers from which the drug is generally available for purchase by pharmacists and pharmacies in Texas at the maximum allowable cost price that is the subject of the appeal.

S.B. 332 makes confidential a maximum allowable cost list that applies to a pharmacist or pharmacy and is maintained by a health benefit plan issuer or pharmacy benefit manager, but prohibits such confidentiality from being construed to alter a health benefit plan issuer's or pharmacy benefit manager's obligations to provide a process to access the maximum allowable cost list. The bill prohibits its provisions from being waived, voided, or nullified by contract and from being construed to waive a remedy at law available to a pharmacist or pharmacy.

S.B. 332 requires the commissioner of insurance to enforce the bill's provisions and excludes from the applicability of the bill's provisions maximum allowable costs for pharmacy benefits provided under specified programs, health benefit plans, and a workers' compensation insurance policy or other related form of providing medical benefits. The bill specifies that it is the intent of the legislature that the bill's requirements apply to all health benefit plan issuers and pharmacy benefit managers unless otherwise excluded by the bill's provisions or prohibited by federal law.

EFFECTIVE DATE

January 1, 2016.