

SUBJECT: “Medigap” prescription drug benefit plans

COMMITTEE: Insurance — committee substitute recommended

VOTE: 9 ayes — Smithee, Seaman, Bonnen, Eiland, Gallego, B. Keffer, Taylor, Thompson, Van Arsdale
0 nays

WITNESSES: For — Mike Pollard, Texas Association of Life and Health Insurers; Pati McCandless, UNICARE
Against — David Gonzales, Texas Pharmacy Association
On — Lisa McGiffert, Consumers Union

BACKGROUND: Medicare is the federal health insurance plan that covers individuals over age 65, financed primarily through a payroll tax on employers and employees. The basic program offers coverage for hospital services, while a supplemental program offers coverage for office visits and related health services. Neither program offers coverage for prescription pharmaceuticals. Enrollees may purchase “Medigap” insurance to pay for prescriptions and other services that Medicare does not cover. Some Medicare beneficiaries in certain parts of the state may obtain prescription coverage without Medigap insurance if they choose to enroll in a managed care plan called Medicare+Choice.

Art. 3.74 of the Insurance Code establishes minimum standards for supplemental Medicare policies. It authorizes the State Board of Insurance to issue rules about minimum standards and benefits for Medigap policies, but requires that the minimums at least meet those established by federal statute (42 U.S.C. Sec. 1395ss). T.A.C., Title 28, part 1, ch. 3, subch. T, Minimum Standards for Medicare Supplement Policies, establishes the minimum benefit standards for Medigap policies. It also permits an insurer, with prior approval of the commissioner, to offer new or innovative benefits to a policy that otherwise complies with the applicable standards.

DIGEST: CSHB 1268 would authorize insurers offering a Medigap plan to offer a drug benefit plan that met federal guidelines or a new or innovative plan filed with and approved by the commissioner of the Texas Department of Insurance (TDI). It would create a file and use system for the plans under which the insurer could assume approval 61 days after filing unless notified otherwise.

The bill also would authorize insurers to offer a prescription drug discount program under which participants could purchase drugs and medical supplies or services from vendors at a discount. Offers to join a discount program would not violate state law prohibiting the offer of rebates in insurance policy solicitations.

The bill would take effect September 1, 2003, and would apply to policies issued or renewed on or after January 1, 2004.

SUPPORTERS SAY: HB 1268 would make the current regulations of Medigap policies apply to those that offer prescription drug benefits. Under current law, all supplemental policies must be filed with TDI and are presumed approved unless otherwise informed within 60 days. In addition, current law permits new or innovative plans, which can refer to any plan that is not specifically included in the federal statute. The bill would make it clear that the same requirements apply to prescription drug plans as to other Medigap plans. Plans still would be approved by TDI, which would prevent insurers from offering elderly Texans substandard plans.

The Legislature should clarify that the current regulations of Medigap policies apply also to those that offer prescription drug benefits because TDI has been slow to approve these plans in the past. Texas seniors need as many options as possible when evaluating their prescription drug coverage, and the state should hasten the delivery of valid plans to the marketplace.

Insurers also would be able to offer discount programs that could be valuable to their elderly enrollees. Insurers are prohibited from offering rebates in the solicitation of insurance policies to ensure that plans are freely purchased, but this also prohibits them from passing savings along to their customers. Insurers can negotiate discounts on services that they do not offer, such as hearing aids and eyeglasses, but cannot tell potential enrollees about the discount programs until after they have enrolled. If insurers could advertise

the discounts to potential customers, it might encourage competition among insurers and result in more insurers offering discounts.

**OPPONENTS
SAY:**

This bill would not just clarify that current regulations applied to prescription Medigap plans — it also could allow insurers to offer inadequate plans to the elderly. Texas law allows the introduction of new or innovative benefits only in addition to an existing policy that otherwise complies with the applicable standards. This bill would permit insurers to offer new plans, not just add-on benefits. Further, the only direction to the TDI commissioner would be regarding the approval process, not the criteria for approval. For example, this bill would allow an insurer to offer a Medigap plan that promised prescription drug coverage, but only covered ibuprofen.

Current regulations are sufficient to cover legitimate Medigap policies. TDI has not been slow to approve plans in the past. If the agency takes no action, the plan is assumed approved within 60 days. There is no way for TDI to delay.

Insurers should not be permitted to offer discount cards. It would be confusing and frustrating for enrollees who thought they had some prescription coverage, only to discover it was merely a few dollars off specific products at limited locations. In most people's minds, insurers offer benefits, not discounts. Texas should not confuse the two.

**OTHER
OPPONENTS
SAY:**

If insurers are to offer discount cards, their benefits and limitations should be explained clearly to enrollees. Discount cards pose an administrative problem for pharmacists who must explain why an enrollee's prescriptions are or are not covered. Often the pharmacist cannot discern if the discount card is legitimate or what it covers. The state should ensure that discount cards would not be confusing for elderly Texans and pharmacists before permitting insurers to offer them.

NOTES:

The bill as introduced would have required all Medigap policies to offer a drug benefit.

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The companion bill, SB 450 by Carona, was reported favorably, as substituted, by the Senate State Affairs Committee on April 28.