

SUBJECT: Allowing mail order and community pharmacy plans for state employees

COMMITTEE: Government Reform — committee substitute recommended

VOTE: 7 ayes — Callegari, Pitts, Berman, Leibowitz, Miles, Rodriguez,
W. Smith

0 nays

WITNESSES: For — Jim Martin, Texas Pharmacy Association; Mark Newberry, Independent Pharmacy Alliance of Texas; Gerry Purcell, Independent Pharmacists of Texas; Mary Ann Wheatley; (*Registered, but did not testify*: Richard Beck, Suzanna Hupp, Gerhardt Schulle, Jr., American Pharmacies; Karen Reagan, Texas Federation of Drug Stores)

Against — (*Registered, but did not testify*: Michael Gross, Texas State Employees Union)

On — Philip S. Dial, Ann Fuelberg, Employees Retirement System; Andrew Homer, Texas Public Employees Association; Michael Johnsrud; Ronnie Jung, Teacher Retirement System

BACKGROUND: The state offers health benefit plans to two primary populations: current and retired state employees and current and retired teachers. The plans for state employees are administered by the Employees Retirement System of Texas (ERS), while the plans for teachers are administered by the Teachers Retirement System (TRS). Both ERS and TRS offer a range of managed care benefit plans, and all plans include a prescription drug benefit, though the copayments or restrictions may vary by plan.

A formulary is a list that designates which drugs are preferred under a drug benefit plan. While all drugs may be reimbursed by the drug plan, prescription drugs that are not on the formulary usually have a higher co-payment or coinsurance rate than those on the formulary.

In 2003, the 78th Legislature enacted SB 1173 by Janek, which added Insurance Code, sec. 1551.219 prohibiting a state health plan from requiring a participant to purchase prescription drugs through a mail order program. However, the participant is required to pay a deductible,

copayment, coinsurance or other cost-sharing obligation to cover the additional cost of obtaining the prescription through another method besides by mail order.

DIGEST: CSHB 1613 would amend the Insurance Code, adding ch. 1560 to prohibit ERS or TRS from:

- requiring participants to use mail order pharmacies for prescriptions;
- discriminating between pharmacies based on whether they were mail order or community retail pharmacies by limiting the quantity of prescription drugs the participant could obtain from the pharmacy, including the number of days of supply, units, or refills, requiring the participant to pay a different co-payment, coinsurance, or deductible amount, or using different formularies for mail order and community retail pharmacies;
- providing a monetary incentive or financial penalty that would influence a participant's choice of pharmacies; and
- prohibiting a pharmacy licensed by the state and meeting all requirements of a health benefit plan from participating in the plan.

The bill would require state health insurance plans to reimburse all pharmacies at a rate based on a current and nationally recognized benchmark index for both brand name and generic prescription drugs.

CSHB 1613 would require a pharmacy benefit manager (PBM) hired to administer a prescription drug plan to provide ERS and TRS with annual electronically filed reports detailing the actual acquisition cost of all drugs purchased by the PBM and all rebates, rebate administrative fees and other benefits paid to the PBM. The PBM would be required to reimburse or provide a credit to the state health plans equal to the amount of rebates or other benefits within 30 days of receiving them. A PBM could designate as confidential any information the PBM was required to disclose as a result of reporting requirements.

The bill also would require the Texas Department of Insurance to investigate any complaints about conduct regulated under ch. 1560 and would authorize the department to assess an administrative penalty of up to \$1,000 for every prescription filled or not filled in violation of ch. 1560.

CSHB 1613 would amend Insurance Code, sec. 1551.219 to prohibit state health plans from requiring a participant to pay a deductible, copayment, coinsurance or other cost-sharing obligation to cover the additional cost of obtaining the prescription through another method besides by mail order.

The bill would apply to health benefit plans beginning on January 1, 2008, but the bill would take effect on September 1, 2007.

SUPPORTERS
SAY:

Neither ERS nor TRS has realized the cost savings through PBMs and mail order pharmacies anticipated when the Legislature enacted SB 1173 in 2003. CSHB 1613 could result in savings of more than \$15 million a year beginning in 2009, according to projections from the Legislative Budget Board's fiscal note.

A March 2007 *Journal of Managed Care Pharmacy* article compared pharmacy claim records from two Texas benefit plans for fiscal year 2004. The conclusion was that lower unit pricing through mail-order channels did not translate into significant cost reductions for the state plans. Some generic drug prices actually were higher through the mail order pharmacy companies than through community pharmacies.

PBMs also operate mail order pharmacies from which they derive most of their revenues. The arrangement appears to be a conflict of interest. These PBMs claim to provide discounts of up to 28 percent on prescriptions, but the lack of transparency about their pricing and rebates received from drug companies makes it difficult to evaluate these claims. CSHB 1613 would open up these records for inspection by the health plans.

Many ERS and TRS participants, particularly retired state employees and teachers, must take a variety of prescription drugs. They need to consult in person with a trained and licensed pharmacist about such topics as possible drug interactions. Often participants need their prescriptions quickly and cannot wait on a mail order delivery. CSHB 1613 would not mandate use of either mail order or community pharmacies as long as they offered comparable prices and services.

Community retail pharmacies are vital to the economic health of smaller Texas communities, and these businesses, in turn, are dependent on prescription business from state employees, teachers, and retirees. The local drug stores are the ones who purchase ads in the high school football program and in the publications for retired teacher groups. CSHB 1613

would help return the tax money spent for health plans back into the community.

**OPPONENTS
SAY:**

The concerns about PBMs' influence over drug purchasing is based primarily on pharmacists protecting their own professional interests. PBMs work like a managed care plan in that they control costs by managing utilization of services. There is a direct relationship between favorable contract terms with the PBMs and their mail order businesses. If the mail order volume were to drop significantly, the plans could incur additional administrative costs and less favorable discount rates and rebates. If savings failed to materialize, the additional costs would have to be made up in higher state contributions and member contributions.

Nostalgia about the old corner drug store can easily be overstated. Most prescriptions now are filled by large national chains, such as Wal-Mart and CVS. Even these giants find mail order pharmacy to be their biggest competitors, and that market discipline helps keep drug prices competitive.

NOTES:

According to the fiscal note, CSHB 1613 would result in a savings of \$10 million in fiscal 2009, plus another savings of \$5 million in other state funds and in federal funds.