

- SUBJECT:** Allowing community pharmacies to issue multiple-month prescriptions
- COMMITTEE:** Pensions, Investments and Financial Services — favorable, without amendment
- VOTE:** 7 ayes — Truitt, Anchia, Flynn, Hopson, Parker, Veasey, Woolley
0 nays
2 absent — Anderson, Hernandez
- WITNESSES:** For — Richard Beck, Texas Pharmacy Council; Bob McGahey, Self-Quick Pharmacy; Mark Newberry, Tarrytown Pharmacy, Inc.; (*Registered, but did not testify*: Portia Bosse, Texas State Teachers Association; Robert Culley, True Care Pharmacy; Ann Fickel, Texas Classroom Teachers Association; Tim Lee, Texas Retired Teachers Association; Josh Sanderson, Association of Texas Professional Educators)

Against — Andy Homer, Texas Public Employees Association; Terry Latanich, Medco Health Solutions, Inc.; Kay Shafer, Caremark; (*Registered, but did not testify*: David Dederichs, Express Scripts, Inc.; Kyle Frazier, CompPharma)

On — Robert Kukla, Employees Retirement System of Texas; (*Registered, but did not testify*: Ronnie Jung, Teacher Retirement System of Texas)
- 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.
- DIGEST:** HB 2293 would amend the Insurance Code, adding ch. 1560 to require the Teacher Retirement System of Texas (TRS) and the Employees Retirement System of Texas (ERS) to allow their health benefit plan enrollees to obtain from a community retail pharmacy a multiple-month

supply, defined as a supply for 60 or more days, of any prescription drug, under the same terms and conditions applicable if the prescription drug was obtained from a mail order pharmacy. This would require a community retail pharmacy to agree to accept reimbursement on exactly the same terms and conditions that apply to a mail order pharmacy.

ERS and TRS would not be required to contract with a retail pharmacy that would not agree to accept reimbursement under the same terms and conditions that apply to a mail order pharmacy or more than one mail order pharmacy. Additionally, a community retail pharmacy would not be required to agree to the same terms and agreements applicable to a mail order pharmacy or to provide a multiple-month supply of a prescription drug under the same terms and conditions applicable when the prescription drug was obtained from a mail order pharmacy.

The bill would require state health insurance plans to reimburse all pharmacies at a rate based on a current and nationally recognized benchmark index that included average wholesale price and maximum allowable cost for both brand-name and generic prescription drugs.

HB 2293 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.

HB 2293 would amend Insurance Code, sec. 1551.224 to prohibit state health plans from requiring a participant who obtained a multiple-month supply of a prescription drug from a retail pharmacy to pay a deductible, copayment, coinsurance, or other cost-sharing obligation that would differ from what would be paid through a mail order program.

The bill would take effect on September 1, 2009, and apply to health benefit plans beginning on January 1, 2010.

**SUPPORTERS
SAY:**

HB 2293 would allow community retail pharmacies to compete for the business of multiple-month prescriptions with pharmacy benefit managers (PBMs), using mail order contracts under the same cost structure and on the same terms. Currently, a teacher or state employee cannot receive a prescription longer than 30 days from a local pharmacy and must pay a co-pay each time, while PBMs can issue multiple-month prescriptions of up to 90 days, which require only two co-payments. This arrangement restricts the choice of consumers and unfairly favors PBMs at the expense of local businesses and communities.

PBMs also operate mail-order pharmacies from which they derive most of their revenues, an arrangement that 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 pricing and rebates received from drug companies makes it difficult to evaluate these claims. A 2008 state auditor's report found that current PBM contract provisions restrict the state from accessing information needed to verify prescription drug care cost and the PBM's contract compliance. HB 2293 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. Often, participants need prescriptions filled quickly and cannot wait on a mail order delivery. The bill would provide a choice to state employees and teachers to use for multiple-month prescriptions the local pharmacist they know and trust. It also would allow them to consult in person with a trained and licensed pharmacist about such topics as possible drug interactions. HB 2293 would not mandate use of either mail-order or community pharmacies, as long as they offered comparable prices and services and operated under the same terms.

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. HB 2293 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 local 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. Allowing community retail pharmacies to compete directly with mail order pharmacies in multiple-month prescriptions, as HB 2293 would provide, would cause the mail order volume to drop significantly. This would cause the plans to incur additional administrative costs and receive less favorable discount rates and rebates. If savings failed to materialize, the additional costs would have to be made up for with higher state contributions and member contributions.

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

NOTES:

The companion bill, SB 2293 by Watson, has been referred to the Senate State Affairs Committee.

During the 2007 regular session, the House passed HB 1613 by Gattis, which died in the Senate.