

SUBJECT: Disclosure of charges to agencies for pharmacy benefit manager services

COMMITTEE: Public Health — favorable, without amendment

VOTE: 9 ayes — Kolkhorst, Naishtat, J. Davis, Gonzales, Hopson, S. King,
Laubenberg, Truitt, Zerwas

0 nays

2 absent — Coleman, McReynolds

SENATE VOTE: On final passage, April 22 — 30-0

WITNESSES: (*On House companion bill, HB 2381:*)
For — (*Registered, but did not testify:* Richard Beck, Texas Pharmacy
Business Council; Robert Culley, John Heal, TrueCare Pharmacy; Steve
Ray, PBA Health and TrueCare Pharmacy)

Against — None

On — (*Registered, but did not testify:* Amanda Crawford, Office of the
Attorney General)

BACKGROUND: The Employees Retirement System of Texas, Teacher Retirement System of Texas, and the University of Texas and Texas A&M University systems rely on pharmacy benefit managers (PBMs) to administer prescription drug programs for health plans and other programs. During the past three decades, PBMs evolved from providers of community pharmacy network coordination and claims administration services to large, publicly owned companies marketing an array of services. PBMs now offer routinely to clients expanded services such as drug formulary development, manufacturer rebate negotiation and collection, specialty pharmacy distribution, and mail-order prescription delivery options.

State agencies and university systems are allowed to share and compare contract pricing information. When a request for contract pricing information is received from another agency, it typically informs the PBM and refers the request through the public information request process,

handled by the Office of the Attorney General (OAG). These requests are handled in this manner due to concerns that the information would be considered proprietary by the PBMs.

DIGEST:

SB 704 would amend the Government Code, ch. 2158 to require a state agency, on request of another state agency, to disclose information relating to the amounts charged by a PBM for services provided under a prescription drug program and other requested pricing information related to a contract for PBM services. A state agency would be required to provide this information no later than the 30th day after the date the information was requested. A state agency would include an institution of higher education.

The bill would not require disclosure of information that was specifically prohibited from disclosure under a contract with a PBM executed before September 1, 2009.

A contract entered into, amended, or extended on or after September 1, 2009, could not contain a provision that prohibited a state agency from disclosing information.

The information received by a state agency would be confidential. The state agency that received the information would be required to maintain the confidentiality of the information by ensuring that only officers, employees, and agents of the state agency with a need to know the information would have access. The information could not be disclosed to a person outside of the state agency or higher education institution and its agents.

The bill would take effect September 1, 2009.

**SUPPORTERS
SAY:**

SB 704 would require that any new contracts entered into between state agencies and PBMs after September 1, 2009, allow the agencies to share contract pricing information with each other. This would allow the Employees Retirements System of Texas, Teacher Retirement System of Texas, the University of Texas, and Texas A&M University to make more-informed purchasing decisions about pharmaceutical products in order to save Texas taxpayers money.

In the past, after contract information had been shared, it became clear that different state agencies had received much different deals and, at times, it

had been discovered that drugs had been switched. These discoveries have led to numerous lawsuits.

Although state agencies currently are allowed to share this information, they often go through the OAG, due to concerns that the information would be considered proprietary by the PBM. This process is unnecessary, takes a great deal of time, and often discourages agencies from sharing pricing information. It is the opinion of the OAG that contract pricing information shared between agencies is not proprietary. With the clarification that SB 704 would make, agencies no longer would feel the need to go through the OAG in order to exchange pricing information.

SB 704 would be a step toward transparency and accountability in the use of taxpayer dollars. However, it may not always be helpful to share contract information. The bill would allow agencies to share information, but only if they felt it would be beneficial.

OPPONENTS
SAY:

Comparing PBM contracts may not be helpful and potentially could cause problems. Populations are so different that sharing PBM contracts could be comparing apples to oranges. For example, the Teacher Retirement System splits their contracts into two groups, active and retired teachers. These are very different groups with very different needs. Sharing contracts also could lead to renegotiations mid-contract.

The confidentiality provisions in SB 704 should be firmer, including penalties for any breach of confidentiality.

OTHER
OPPONENTS
SAY:

SB 704 would be a step in the right direction, but would not go far enough. There is a need for more transparency, including auditing rights in PBM contracts. A recent report by the State Auditor's Office concluded that PBM contracts should include provisions that ensure the ability of agencies and higher education institutions to audit PBM contractors was not limited or unreasonably restricted. Current contract provisions often restrict access to information necessary to verify prescription drug plan costs and PBM contractors' compliance with their contracts.

The information shared between the state agencies should be public information. The people of Texas have the right to know how much state government is paying for pharmaceutical products.

NOTES:

Rep. Kolkhorst intends to offer floor amendments that would:

- amend sec. 2158.403, regarding confidentiality, to state that information received would not be disclosed to a person outside of the state agency and its agents;
- require that PBM contracts include provisions regarding audits; and
- direct the Texas Department of Insurance to conduct a study on prescription slamming or drug switching.