SUBJECT: Requiring maintenance of prescription drug coverage for smaller markets

COMMITTEE: Insurance — favorably, without amendment

VOTE: 9 ayes — Smithee, Eiland, Hancock, Nash, Sheets, L. Taylor, Torres, Vo, Walle

0 nays

WITNESSES: For — Mireya Zapata, National Multiple Sclerosis Society - South Central Region; Tracy Brinton; (*Registered, but did not testify:* Trey Berndt, AARP; Jodyann Dawson, Texans Care for Children; James Gray, American Cancer Society; Carlos Higgins, Texas Silver-Haired Legislature; Patricia Kolodzey, Texas Medical Association; Stacey Pogue, Center for Public Policy Priorities; Gyl Switzer, Mental Health America of TX; Doris Dwyer)

Against — None

On — Deeia Beck, Office of Public Insurance Counsel; Douglas Danzeiser, Texas Department of Insurance

BACKGROUND: Insurance Code, ch. 1369 prevents a health insurance company that offers group coverage for large employers (at least 51 employees) from changing the cost of any covered prescription drug before the plan renewal date, regardless of whether the drug has been dropped from the plan's preferred drug list (referred to as a formulary).

Large-employer plans that offer prescription drug coverage using at least one formulary must inform enrollees that the plan uses a formulary and must:

- explain what a drug formulary is;
- provide a statement regarding the method used to determine which drugs are included or excluded from the formulary;
- state how often the insurance company reviews the formulary;
- provide notice that an enrollee may contact the insurer to find out if a specific drug is included in a particular formulary;
- disclose whether or not a drug is included in a formulary within three business days of the request;

- and notify the enrollee and anyone else requesting information that the inclusion of a specific drug in a formulary does not guarantee that it will be prescribed.

Large-employer health insurers may refuse to cover a particular drug if it is not included in the formulary at the time of enrollment or renewal, even if the enrollee's physician determines that the drug was medically necessary.

Health plans operating in the small-employer market are exempt from these restrictions, and the law does not apply to insurance plans in the individual market.

DIGEST:

HB 1405 would require health insurance companies operating in the small-employer (two to 50 employees) and individual markets to maintain prescription drug coverage at the contracted benefit level until the plan's renewal date, regardless of whether a drug was dropped from the plan's formulary before the renewal date.

Small-employer and individual health plans that offered prescription drug coverage using at least one formulary would have to inform enrollees that the plan used a formulary and comply with the existing requirements for large-employer insurers.

Small-employer and individual health insurers could refuse to cover a particular drug if it was not included in the formulary at the time of enrollment or renewal, even if the enrollee's physician determined that the drug was medically necessary.

The bill would take effect September 1, 2011, and apply to health plans delivered, issued for delivery, or renewed on or after January 1, 2012.

SUPPORTERS SAY:

HB 1405 would bring greater equity to Texas' health insurance industry by making health plans in the small-group and individual markets comply with the same rules regarding drug formularies as the large-group market.

The bill would protect consumers from fluctuations in prescription drug prices, making it easier for Texans who have paid for insurance policies to budget for their health care costs. Enrollees in small-employer and individual plans deserve to be covered by companies that honor their contracts just as enrollees in large-employer plans do. Small-group and

individual enrollees sign contracts and pay upfront for coverage upon which they think they can rely. It is only fair to expect insurance companies to fulfill their contractual obligations. HB 1405 would ensure that insurance providers in the small-employer and individual markets are held to the same standards as those in the large-employer market.

It is critical for individuals suffering from chronic illnesses to receive continuity of coverage throughout the terms of their policies because they often need specific medications to remain healthy. When an insurance company changes the price or availability of a specific drug in the middle of an enrollee's policy, it forces the enrollee to make tough decisions about his or her health and financial well being. Enrollees who can no longer afford the costs of their prescription drugs might be forced to stop taking them, risking their own health in the process. HB 1405 would give enrollees peace of mind and consistency in care.

OPPONENTS SAY:

HB 1405 would limit a private company's ability to make mid-contract modifications to its business in order to save money and operate efficiently. The bill would interfere excessively with the freedom of companies to make their own business decisions.

NOTES:

Based on analysis from the Texas Department of Insurance, the Legislative Budget Board estimates that the implementation of the bill would result in a one-time revenue gain of $15,000 in fiscal 2012 from filing fees, and that any costs associated with implementation would be absorbed within existing agency resources.