

- SUBJECT:** Revising workers' compensation pharmacy services
- COMMITTEE:** State Affairs — committee substitute recommended
- VOTE:** 10 ayes — Cook, Menendez, Craddick, Frullo, Gallego, Geren, Hilderbran, Huberty, Solomons, Turner
- 0 nays
- 3 absent — Harless, Oliveira, Smithee
- WITNESSES:** For — (*Registered, but did not testify:* Lee Ann Alexander, Liberty Mutual Group; Brian Allen, Workers' Compensation Pharmacy Alliance, StoneRiver Pharmacy Solutions; Kristi Armijo, ExpressScripts; Pam Beachley, Texas Cotton Ginners' Trust; Albert Betts, Association of Fire and Casualty Companies in Texas; Ronald Cobb, American Insurance Association; Cathy Dewitt, Texas Association of Business; Matthew Hewitt, Health E Systems; Rick Levy, Texas AFL-CIO; Jo Betsy Norton, Texas Mutual Insurance Co.; Kevin Tribout, PMSI, CompPharma; Joshua Webster, Matrix Healthcare Services, Inc; Joe Woods, Property Casualty Insurers Association of America)
- Against — None
- On — (*Registered, but did not testify:* Jonathon Bow, Barbara Klein, State Office of Risk Management; Amy Lee, Texas Department of Insurance, Division of Workers' Compensation)
- BACKGROUND:** In 2005, the 79th Legislature enacted HB 7, which abolished the Texas Workers' Compensation Commission, moved its regulatory functions to the Texas Department of Insurance as the Division of Workers' Compensation (DWC), and directed the formation of health care networks for the delivery of workers' compensation health care services. HB 7 also specifically prohibited the delivery of pharmacy services through workers' compensation health care networks.
- A voluntary or informal network is a contractual agreement between an insurance carrier and a provider to provide workers' compensation services for a discounted rate. A voluntary network typically refers to a

workers' compensation health care network that was established by law before the enactment of HB 7.

In 2007 the 80th Legislature enacted HB 473, which required all voluntary and informal workers' compensation networks to be certified with DWC by January 1, 2011, to have transparent, written contracts for fee discounts, and to submit their contracts to DWC upon request.

DIGEST:

C5HB 528 would enact a new workers' compensation program section in the Labor Code specifically regarding pharmacy reimbursement and networks. It would not allow pharmacy services to be delivered through a contract with a certified workers' compensation health care network or by political subdivisions that directly contracted with providers for workers' compensation services.

It would define as an informal network a contract between a carrier and a pharmacy provider that included a specific fee schedule. It would define a voluntary network as a network for pharmacy services that was established under previous workers' compensation law.

C5HB 5 would authorize prescription medication or services to be reimbursed with DWC fee guidelines or at a contract rate. It also would specify that a workers' compensation carrier could pay pharmacy fees that were inconsistent with the DWC fee guidelines only if the carrier had a contract with the pharmacy provider that specified a fee schedule. If a carrier or the authorized agent used an informal or voluntary network, a contractual agreement would have to exist between the carrier and the network that authorized the network to contract with pharmacy providers on the carrier's behalf. There also would have to be a contract between the network and the pharmacy provider that specified the fee schedule. The network or the carrier would be required to notify contracted pharmacy providers at least quarterly of whether the fee arrangements were sold, leased, transferred, or conveyed and would have to meet other specified requirements concerning the information, documentation, and method of delivery of the notice.

Upon request, a carrier would have to provide copies of each contract to DWC. The contracts would be considered confidential and not subject to disclosure. The carrier could be required to pay DWC fees to pharmacies if the contract was not provided to DWC or was noncompliant with the provisions in the bill.

Informal or voluntary pharmacy networks would be required to report specified information to DWC by the 30th day of their establishment and within 30 days of any subsequent changes. An informal or voluntary network with a contract between a carrier and a pharmacy provider in effect on the effective date of the bill would be required to file a report to DWC within 30 days after the bill's effective date. DWC would consider a contract between a carrier and a pharmacy provider valid if it was in effect between January 1, 2011, and the bill's effective date and if it was arranged under a contract with a voluntary or informal network that was registered with DWC.

A carrier or network that violated these provisions would be subject to administrative penalties.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2011.

**SUPPORTERS  
SAY:**

CSHB 528 is needed to fix an unintended consequence of current workers' compensation laws. Statutory changes in 2007 requiring network certification inadvertently included pharmacy care, even though other sections of the code excluded pharmacies from network participation. Some now interpret network certification requirements to exclude the participation of pharmacy benefit managers (PBMs) from assisting in workers' compensation pharmacy services because many PBMs have a network of contracted pharmacies, yet these networks do not meet the definition of a workers' compensation health care network and therefore are not authorized. It is common practice for many pharmacies to contract with PBMs to help reduce their administrative and other costs in filing and processing workers' compensation claims. PBMs play an important role in workers' compensation and may serve as authorized agents on behalf of a carrier or as a voluntary or informal network provider.

The bill would not require PBMs to become certified health care networks, but would authorize their participation in the workers' compensation program via informal or voluntary registered networks. The bill would maintain legislative intent to keep pharmacies from having to join certified workers' compensation health care networks because forming pharmacy networks is not a cost-effective approach to reduce or contain pharmacy expenses — doctors write prescriptions, not pharmacists, and therefore direct the volume and expense of workers' compensation drug costs. Also,

by keeping pharmacies independent of health care provider networks, Texas allows injured workers to fill their workers' compensation prescriptions at the same place they fill their group health prescriptions. The pharmacist may represent the only intersection of both health care systems and the only one to identify potential adverse drug interactions or effects.

CSHB 528 would define in law the requirements and conditions concerning pharmacy reimbursement and networks. It would clarify pharmacy reimbursement to be limited to either the DWC fee schedule or a rate that the pharmacy agreed to by contract. By requiring carriers to submit contracts to DWC upon request, the agency could better ensure that carriers and pharmacy networks were complying with the law. Such contract submission requirements would not be new. They have been in effect several years and have represented the only way carriers can prove that they are paying health care providers according to the law.

The bill's author intends to further clarify how DWC would develop the fee schedule to help contain pharmacy costs and make pharmacy fee guideline development more consistent with medical fee guideline development. A floor amendment also will specify that language in the medical fee guidelines law used to judge what was a usual and customary fee would not be applicable to pharmacy fees.

CSHB 528 would ensure contract compliance, transparency, and program integrity by making sure pharmacies knew when networks were selling their contracted provider discounts to other health plans and carriers, requiring pharmacy contracts to be submitted to DWC, and specifying violations would be subject to administrative penalties.

Voluntary networks have been required since 2007 to register with DWC, and administrative law has required voluntary pharmacy network registration. CSHB 528 would rightfully penalize workers' compensation carriers that now contract with unregistered pharmacy networks. This change is necessary to bring under regulatory oversight networks that were made illegal under HB 473 starting January 1, 2011.

**OPPONENTS  
SAY:**

This bill would require PBMs to have registered with DWC prior to the enactment of this bill to ensure that their contracts were considered valid, yet the confusion around current law has prevented many PBMs from registering. Pharmacies were supposed to be exempt from networks, so

many saw no need to register. This bill could force workers' compensation carriers and PBMs to renegotiate contracts that now comply with this bill's requirements, but were considered invalid solely due to nonregistration. Carriers and networks also could be subject to administrative penalties because of this confusion.

DWC is overly intrusive in requiring carriers to provide their contracts not only with networks but also between the network and pharmacies, and providing such contracts would be an administrative burden and expense.

**OTHER  
OPPONENTS  
SAY:**

This bill should more completely specify conditions of pharmacy reimbursement. Carriers still are trying to pay pharmacies a "usual and customary" rate, which they say reflects what usually is paid but is undefined in law or unsupported by independent sources and below the DWC fee guidelines.

The bill should include more direction to DWC when adopting pharmacy fee schedules to better contain pharmacy costs. DWC fee schedules give pharmacies the certainty of a known level of payment for workers' compensation claims and allow them to refuse to join networks or sign contracts that would pay less. For example, in laws concerning the development of workers' compensation medical fee guidelines, DWC is required to consider the increased security of payment afforded by the fee guidelines.

**NOTES:**

The companion bill, SB 318 by Van de Putte, was referred to the Senate State Affairs Committee on February 2.