SUBJECT: Authorizing HMOs to contract with certain entities, including PBMs

COMMITTEE: Insurance — committee substitute recommended

VOTE: 9 ayes — Phillips, Muñoz, R. Anderson, Gooden, Oliverson, Paul, Sanford, Turner, Vo

0 nays

WITNESSES: For — David Gonzales, Alliance of Independent Pharmacies of Texas; Jamie Dudensing, Texas Association of Health Plans (*Registered, but did not testify*: Dan Posey, Baylor Scott & White Health; Patricia Kolodzey, Blue Cross Blue Shield; Mindy Ellmer, Pharmaceutical Care Management Association; John Heal, Pharmacy Buying Association d/b/a Texas TrueCare Pharmacies; Wendy Wilson, Prime Therapeutics; Amanda Martin, Texas Association of Business; Duane Galligher, Texas Independent Pharmacies Association; Justin Hudman, Texas Pharmacy Association; Kandice Sanaie, UnitedHealthcare)

Against — None

On — (*Registered, but did not testify*: Jamie Walker, Texas Department of Insurance)

BACKGROUND: A health maintenance organization (HMO) provides for or arranges prepaid health insurance plans in which providers are under contract with the organization to provide health care services.

Insurance Code, sec. 4151.151, which addresses regulation of third-party administrators, defines a "pharmacy benefit manager" to mean a person, other than a pharmacy or pharmacist, who acts as an administrator in connection with pharmacy benefits.

Insurance Code, sec. 1272.001 defines a "delegated entity" as an entity, other than an HMO authorized by the Texas Health Maintenance Organization Act in Insurance Code, ch. 843, that accepts responsibility

for performing a function on behalf of the HMO, and that either by itself or through subcontracts with one or more entities, arranges or provides medical or health care to an enrollee in exchange for a predetermined payment on a prospective basis.

A "delegated network" means a delegated entity that assumes total financial risk for more than one of the following health care services: medical care, hospital or other institutional services, or prescription drugs. A "delegated third party" means a third party other than a delegated entity that contracts with a delegated entity, either directly or through another third party for certain functions.

DIGEST:

CSHB 3218 would allow a health maintenance organization (HMO) to provide or arrange for health care services through providers or groups of providers who were under contract with an entity that was under contract with the HMO to provide a network of providers. This subcontract would be allowed only if the contract between the entity and the health maintenance organization expressly set forth that it:

- did not limit the HMO's authority or responsibility, including financial responsibility, to comply with any regulatory requirement that applied to a function performed by the entity; and
- required the entity to comply with all regulatory requirements that applied to a function the entity performed.

Notwithstanding any other law, an HMO and the entity with which it contracted would be subject to laws regulating delegation of certain functions by HMOs in Insurance Code, ch. 1272 as if the entity were a delegated entity. The bill would provide exceptions for:

- a delegated network;
- a delegated third party;
- an individual physician; or
- a group of employed physicians practicing medicine under one federal tax identification number, whose total claims paid to providers outside the group made up less than 20 percent of the

group's total collected annual revenue.

The bill also would exempt an entity that did not assume risk and the HMO with which it contracted from the following provisions of the Insurance Code related to HMO delegation:

- the solvency compliance monitoring plan;
- the financial solvency examination by the Texas Commissioner of Insurance;
- the contractual requirement related to proof of financial viability; and
- reserve requirements.

The bill would take effect September 1, 2017.

SUPPORTERS SAY:

CSHB 3218 would clarify that HMOs may contract with pharmacy benefit managers (PBMs). It has been a long-standing industry practice for HMO health plans to contract with PBMs to access pharmacy networks rather than contracting directly with each provider. PBMs act as an administrator in connection with pharmacy benefits and can process prescription drug claims on behalf of a health insurance plan.

The bill would increase oversight of PBMs and ensure HMOs were held accountable for their contractors. The bill also would require PBMs to follow the same laws as HMOs, including laws regarding balance billing, which would increase patient and provider protections. Making these changes would increase accountability and transparency for contracts between HMOs and PBMs.

The bill would apply only to HMOs to address a specific concern from the Texas Department of Insurance regarding PBMs contracting with these insurance plans. Statute already defines "pharmacy benefit managers."

OPPONENTS SAY:

CSHB 3218 should go further to define the role of PBMs in statute and to require them to be subject to the same contracting requirements as all health insurance carriers, not just HMOs.

NOTES: A companion bill, SB 1413 by Schwertner, was approved by the Senate on April 26.