

SUBJECT: Providing maximum copays for prescriptions under health benefit plans

COMMITTEE: Insurance — committee substitute recommended

VOTE: 8 ayes — Phillips, Muñoz, R. Anderson, Gooden, Oliverson, Paul, Turner, Vo
0 nays
1 absent — Sanford

SENATE VOTE: On final passage, April 19 — 30-1 (Huffines), on Local and Uncontested Calendar

WITNESSES: *On House companion bill, HB 2360:*
For — Chase Bearden, Coalition of Texans with Disabilities; Miguel Rodriguez, Texas Pharmacy Business Council; Steve Hoffart; (*Registered, but did not testify*: Blake Hutson, AARP Texas; Audra Conwell, Alliance of Independent Pharmacists of Texas; Stacey Pogue, Center for Public Policy Priorities; Reginald Smith, Communities for Recovery; Dennis Wiesner, HEB; Will Francis, National Association of Social Workers - Texas Chapter; Simone Nichols-Segers, National MS Society; John Heal, Pharmacy Buying Association d/b/a Texas TrueCare Pharmacies; Dan Hinkle, Texas Academy of Family Physicians; Bradford Shields, Texas Federation of Drug Stores; Duane Galligher, Texas Independent Pharmacies Association; Clayton Stewart, Texas Medical Association; BJ Avery and Tommy Lucas, Texas Optometric Association; David Reynolds, Texas Osteopathic Medical Association; Justin Hudman, Texas Pharmacy Association; Michael Wright, Texas Pharmacy Business Council; Bonnie Bruce, Texas Society of Anesthesiologists)

Against — Abigail Stoddard, Prime Therapeutics; Allen Horne; (*Registered, but did not testify*: Melodie Shrader, Pharmaceutical Care Management Association; Wendy Wilson, Prime Therapeutics)

On — Michael Harrold, Express Scripts; (*Registered, but did not testify*:

Doug Danzeiser, Texas Department of Insurance)

BACKGROUND: Insurance Code, ch. 1369 governs the distribution of health insurance benefits related to prescription drugs and devices.

DIGEST: CSSB 1076 would prohibit a health benefit plan issuer that covered prescription drugs from requiring an individual covered under a health benefit plan to make a payment for a prescription drug at the point of sale that was greater than the lesser of:

- the applicable copayment;
- the allowable claim amount for the prescription drug; or
- the amount an individual would pay for the drug without using a benefit plan or any other source of drug benefits or discount.

The bill would take effect September 1, 2017, and would apply only to a health benefit plan issued, delivered, or renewed on or after January 1, 2018.

SUPPORTERS SAY: CSSB 1076 would prevent pharmacy benefit managers (PBMs) from engaging in the deceptive and profiteering practice of insurance "clawbacks," in which the PBM requires a pharmacy to collect an excessively high copayment and remit the excess amount to the PBM. This practice leaves insured consumers worse off than if they had not been covered by a benefit plan, makes prescription medication less accessible, and drives health care inflation.

The bill would enable pharmacies to provide quality customer service without violating contractual obligations. Under current "clawback" systems, pharmacies are prohibited from notifying consumers about less expensive options to receive the same drugs.

The bill would not infringe upon the ability of PBMs to freely contract with pharmacies. The bill's language is tailored to regulate only a patient's maximum copay at the point of sale, which would not be affected by future performance-based fees. Therefore, PBMs and pharmacies could

still include performance-based payments in their contracts.

OPPONENTS
SAY:

CSSB 1076 could infringe upon private contracts between pharmacies and PBMs by preventing performance-based payment. The "allowable claim amount" of a benefit plan is often subject to a PBM's review of a pharmacy's performance. The bill could prevent future adjustments to the allowable claim amount, effectively preventing performance-based contracting.

NOTES:

CSSB 1076 differs from the Senate-passed bill in that, when setting terms for the maximum payment allowed, the committee substitute would include the amount an individual would pay for a drug without using a benefit plan or other discount, while the Senate-passed bill would have included the negotiated and allowable claim amount.

A companion bill, HB 2360 by G. Bonnen, was reported favorably by the House Insurance Committee on April 26.