BILL ANALYSIS

Senate Research Center

H.B. 1613
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State Affairs
5/18/2007
Committee Report (Amended)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Pharmacy benefit managers (managers) play the important role of "middleman" in administering prescription drug benefit programs for health plans and employers. The state contracts with managers to get prescription drugs at a lower cost compared with those of community pharmacies, and managers have a responsibility to aid the state in obtaining such lower costs. However, as the manager industry has evolved, large managers have started to operate their own mail order pharmacies. This places them in the position of being both negotiator and provider of a plan's prescription drug services. Because of this, the state does not always save money by using a manager. Additionally, managers often offer community pharmacies "take-it-or-leave-it" contracts that provide no option for negotiation. This causes a significant loss of business for community pharmacies because patients are required to choose between using the manager's mail order pharmacy to obtain maintenance drugs and paying higher co-pays at the local pharmacy.

H.B. 1613 authorizes pharmacies to be reimbursed at an identical rate using the nationally recognized price benchmarks and other standards and requires the Employees Retirement System of Texas (ERS) and Teacher Retirement System of Texas (TRS) to offer a pharmacy benefit that allows beneficiaries access to the same types of medicine at a community retail pharmacy at the same co-pay and supply limit amounts as a manager's mail order pharmacy. The bill also requires managers contracted with ERS and TRS to provide a confidential annual electronic report of the actual acquisition cost of the drugs purchased by the managers. Finally, the bill requires managers to identify the source, type, and amount of all rebates and other monetary benefits related to the health plan received by the manager from drug manufacturers, and to provide or credit the health plan with all of the rebates or monetary benefits within 30 days of receipt by the manager.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle H, Title 8, Insurance Code, by adding Chapter 1560, as follows:

CHAPTER 1560. DELIVERY OF PRESCRIPTION DRUGS BY MAIL

Sec. 1560.001. DEFINITIONS. Defines "community retail pharmacy," "mail order pharmacy," and "prescription drug formulary."

Sec. 1560.002. APPLICABILITY OF CHAPTER. Provides that this chapter applies only to a health benefit plan (plan) that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage or similar coverage document that is offered or administered by certain retirement systems set forth in this subsection.

Sec. 1560.003. ACCESS TO PHARMACIES. (a) Prohibits an issuer of a plan that provides pharmacy benefits to enrollees from taking certain actions set forth in this subsection, notwithstanding any other law.

(b) Requires an issuer of a plan that provides pharmacy benefits to enrollees to offer all pharmacies the same conditions and terms of participation in the plan, including prescription drug reimbursement rates, regardless of whether a pharmacy is a mail order pharmacy or a community retail pharmacy.

Sec. 1560.004. PRESCRIPTION DRUG REIMBURSEMENT RATES. (a) Requires an issuer of a plan that provides pharmacy benefits to enrollees to reimburse pharmacies participating in the health plan using prescription drug reimbursement rates that are based on a current and nationally recognized benchmark index for both brand name and generic prescription drugs.

(b) Requires an issuer of a plan to use the same benchmark index, including the same national prescription drug codes, to reimburse all pharmacies participating in the plan, regardless of whether the pharmacy is a mail order pharmacy or a community retail pharmacy.

Sec. 1560.005. ACQUISITION COSTS AND REBATES. Requires an issuer of a plan that contracts with a third-party administrator, pharmacy benefit manager (manager), or other entity to manage pharmacy benefits provided to enrollees through a mail order pharmacy to require the managing entity to take certain actions set forth in this subsection.

Sec. 1560.006. PHARMACY BENEFIT MANAGERS: DESIGNATION OF CONFIDENTIAL INFORMATION. (a) Authorizes a manager to designate as confidential any information the manager is required to disclose under Section 1560.005.

(b) Prohibits information designated as confidential under this section from being disclosed to any person without the consent of the manager unless the disclosure meets certain conditions.

Sec. 1560.007. COMPLAINT AND ENFORCEMENT; ADMINISTRATIVE PENALTIES. (a) Requires the Texas Department of Insurance (TDI) to investigate any complaint it receives concerning conduct regulated by this chapter.

(b) Requires the commissioner of insurance (commissioner), following an investigation under Subsection (a), to issue a written determination of the outcome of the investigation, including whether TDI has taken or intends to take any action under Chapters 81-86 (General Provisions Regarding Discipline and Enforcement), (Sanctions), (Emergency Cease and Desist Orders), (Administrative Penalties), (General Criminal Enforcement), and (Revocation or Modification of Certificate of Authority; Authority to Bring Certain Actions).

(c) Requires the commissioner, if, as a result of a complaint investigated under Subsection (a), the commissioner determines that an issuer of a plan has violated this chapter, to impose an administrative penalty against the issuer of the plan in accordance with Chapter 84 (Administrative Penalties). Prohibits the amount of an administrative penalty imposed under this subsection from exceeding $1,000 per prescription that was filled or that was not filled in violation of this chapter. Provides that the limitation on the amount of an administrative penalty under Section 84.022 (Penalty Amount) does not apply to an administrative penalty imposed under this subsection.

SECTION 2. Amends Section 1551.219, Insurance Code, as added by Chapter 213, Acts of the 78th Legislature, Regular Session, 2003, to prohibit, rather than require, the board of trustees of the Employees Retirement System of Texas or plan from requiring a participant who chooses to obtain a prescription drug through a retail pharmacy or other method other than by mail order to

pay a deductible, copayment, coinsurance, or other cost-sharing obligation to cover the additional cost of obtaining a prescription drug through that method rather than by mail order.

SECTION 3. (a) Amends Section 843.338, Insurance Code, to make a conforming change.

(b) Amends Section 843.339, Insurance Code, as follows:

Sec. 843.339. New heading: DEADLINE FOR ACTION ON PRESCRIPTION CLAIMS; PAYMENT. (a) Requires a health maintenance organization to pay a pharmacy claim that is submitted in a nonelectronic format not later than the deadline provided under Section 843.338.

(b) Requires a manager that administers a pharmacy claim for a health maintenance organization to pay the provider through electronic funds transfer not later than the 14th day after the date on which the claim is determined under this subchapter to be affirmatively adjudicated, except as provided by Subsection (c).

(c) Requires the manager, if the provider is unable to receive payment of a claim described by Subsection (b) through electronic funds transfer, to pay the claim not later than the 21st day after the date on which the claim is determined under this subchapter (Payment of Claims to Physicians and Providers) to be affirmatively adjudicated.

(c) Amends Section 843.340, Insurance Code, by adding Subsection (f), to require a manager who performs an on-site audit under this chapter (Health Maintenance Organizations) of a provider who is a pharmacist or pharmacy to provide the provider written notice of the audit and requires such notice to be sent by certified mail not later than the 15th day before the date on which the audit is scheduled to occur.

(d) Amends Section 1301.001(1), Insurance Code, to redefine "health care provider."

(e) Amends Section 1301.103, Insurance Code, to make a conforming change.

(f) Amends Section 1301.104, Insurance Code, as follows:

Sec. 1301.104. New heading: DEADLINE FOR ACTION ON PHARMACY CLAIMS; PAYMENT. (a) Requires an insurer to pay a pharmacy claim that is submitted in a nonelectronic format not later than the deadline provided under Section 1301.103.

(b) Requires a manager that administers a pharmacy claim for an insurer under a preferred provider benefit plan to pay the provider through electronic funds transfer not later than the 14th day after the date on which the claim is determined under this subchapter to be affirmatively adjudicated, except as provided by Subsection (c).

(c) Requires the manager, if the provider is unable to receive payment of a claim described by Subsection (b) through electronic funds transfer, to pay the claim not later than the 21st day after the date on which the claim is determined under this subchapter to be affirmatively adjudicated.

(g) Amends Section 1301.105, Insurance Code, by adding Subsection (e) to require a manager who performs an on-site audit under this chapter (Preferred Provider Benefit Plans) of a provider who is a pharmacist or pharmacy to provide the provider reasonable written notice of the audit and requires such notice to be sent by certified mail not later than the 15th day before the date on which the audit is scheduled to occur.

(h) Makes application of this section to a claim submitted by a provider to a health maintenance organization or an insurer prospective.

SECTION 4. Makes application of this Act prospective to January 1, 2008.

SECTION 5. Effective date: September 1, 2007.

SUMMARY OF COMMITTEE CHANGES

Committee Amendment No. 1:

(1) On page 10, line 14, strike "2008" and substitute "2010".

(2) On page 10, line 15, strike "2008" and substitute "2010".

(3) Add the following appropriately numbered SECTION to the bill and renumber subsequent SECTIONS of the bill accordingly:

SECTION __. (a) Requires the Teacher Retirement System of Texas (TRS) and the Employees Retirement System of Texas (ERS) to each conduct a study to determine whether Chapter 1560 (Delivery of Prescription Drugs by Mail), Insurance Code, as added by this Act, and Section 1551.219 (Disease Management Services), Insurance Code, as amended by this Act, have any unintended or unanticipated impact on the accessibility of prescription drugs for or cost of prescription drugs to participants in health benefit plans affected by Chapter 1560 or Section 1551.219, Insurance Code.

(b) Requires TRS and ERS, not later than December 1, 2008, to complete the studies described by Subsection (a) of this section and submit reports summarizing the results of those studies to the lieutenant governor and the speaker of the house of representatives.

Committee Amendment No. 2:

Amend H.B. 1613 (engrossed printing) by striking Sec. 1560.003 and substituting the following:

Sec. 1560.003. MULTI-MONTH SUPPLY OF PRESCRIPTION DRUG. (a) Requires an issuer of a health benefit plan that provides pharmacy benefits to enrollees, notwithstanding any other law, to allow an enrollee to obtain from a contracting retail pharmacy a multi-month supply of any prescription drug available from a mail order pharmacy under the same terms and conditions applicable to the enrollee when the prescription drug is obtained from the mail order pharmacy provided the contracting retail pharmacy agrees to accept reimbursement on exactly the same terms and conditions that apply to the mail order pharmacy.

(b) Defines "multi-month supply of a prescription drug" and ["]contracting retail pharmacy["].

(c) Provides that this section does not require the issuer of a health benefit plan to contract with certain entities.

Amend H.B. 1613 (engrossed printing) by striking SECTION 2 of the bill and substituting the following:

SECTION 2. Amends Section 1551.219, Insurance Code, as added by Chapter 213, Acts of the 78th Legislature, Regular Session, 2003, as follows:

Sec. 1551.219. MAIL ORDER REQUIREMENT FOR PRESCRIPTION DRUG COVERAGE PROHIBITED. Prohibits the board of trustees (board) or a health benefit plan from requiring a participant who chooses to obtain a multi-month supply of a prescription drug through a contracting retail pharmacy under the terms and conditions of Sec. 1560.003 to pay a deductible, copayment, coinsurance, or other cost-sharing obligation that differs from the amount the participant would pay if the participant obtains the multi-month supply of the prescription drug through mail order.