BILL ANALYSIS

Senate Research Center

S.B. 704
By: Nelson
State Affairs
8/26/2009
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, if a state agency or university system that contracts with a pharmacy benefit manager (PBM) receives a request for their contract pricing information from another agency, they typically inform the PBM and refer the request to the Office of the Attorney General (OAG). OAG then rules whether the information is proprietary and confidential. It is the OAG's opinion that contract pricing information shared between agencies does not fall into this category. This process does not prohibit agencies from sharing pricing information, but it discourages them from doing so and is unnecessary and inefficient. State agencies can learn from each other's purchasing strategies and practices. As a consumer of PBM services and a steward of taxpayer dollars, the State of Texas has a right and obligation to make sure each dollar spent on state employees' prescription drugs is spent wisely.

S.B. 704 relates to the regulation of pharmacy benefit managers and mail order pharmacies.

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 Chapter 2158, Government Code, by adding Subchapter H, as follows:

SUBCHAPTER H. PURCHASE OF PHARMACY BENEFIT MANAGER SERVICES

Sec. 2158.401. DEFINITION; APPLICABILITY. (a) Defines "state agency."

(b) Provides that this subchapter applies in relation to a state agency contract or proposed contract for pharmacy benefit manager services without regard to whether the contract or proposed contract is otherwise subject to this subtitle.

Sec. 2158.402. REQUIRED DISCLOSURE. (a) Requires a state agency on request of another state agency to disclose information relating to the amounts charged by a pharmacy benefit manager for pharmacy benefit manager services provided under a prescription drug program and other requested pricing information related to a contract for pharmacy benefit manager services. Requires a state agency to provide information requested under this section not later than the 30th day after the date the information is requested.

(b) Provides that Subsection (a) does not require a state agency to disclose information the agency is specifically prohibited from disclosing under a contract with a pharmacy benefit manager executed before September 1, 2009.

(c) Prohibits a contract entered, amended, or extended on or after September 1, 2009, from containing a provision that prohibits a state agency from disclosing under this subchapter information on the amounts charged by a pharmacy benefit manager for pharmacy benefit manager services provided under a prescription drug program or from disclosing under this subchapter other pricing information related to the contract.

Sec. 2158.403. CONFIDENTIALITY. Prohibits the information received by a state agency under this subchapter from being disclosed to a person outside of the state agency or its agents.

SECTION 2. Amends Subchapter B, Chapter 1369, Insurance Code, by adding Section 1369.0551, as follows:

Sec. 1369.0551. STUDY. (a) Requires the Texas Department of Insurance (TDI) to conduct a study to evaluate the ways in which pharmacy benefit managers use prescription drug information to manage therapeutic drug interchange programs and other drug substitution recommendations made by pharmacy benefit managers or other similar entities. Requires the study to include information regarding pharmacy benefit managers:

(1) intervening in the delivery or transmission of a prescription from a prescribing health care practitioner to a pharmacist for purposes of influencing the prescribing health care practitioner's choice of therapy;

(2) recommending that a prescribing health care practitioner change from the originally prescribed medication to another medication, including generic substitutions and therapeutic interchanges;

(3) changing a drug or device prescribed by a health care practitioner without the consent of the prescribing health care practitioner;

(4) changing a patient cost-sharing obligation for the cost of a prescription drug or device, including placing a drug or device on a higher formulary tier than the initial contracted benefit level; and

(5) removing a drug or device from a group health benefit plan formulary without providing proper enrollee notice.

(b) Requires TDI, not later than August 1, 2010, to submit to the governor, the lieutenant governor, the speaker of the house of representatives, and the appropriate standing committees of the legislature a report regarding the results of the study required by Subsection (a), together with any recommendations for legislation.

(c) Provides that this section expires September 1, 2010.

SECTION 3. Amends Subchapter B, Chapter 1551, Insurance Code, by adding Section 1551.067, as follows:

Sec. 1551.067. PHARMACY BENEFIT MANAGER CONTRACTS. (a) Provides that, in awarding a contract to provide pharmacy benefit manager services under this chapter, the board of trustees of the Employee Retirement System of Texas (board of trustees) is not required to select the lowest bid but is required to select a contract that meets the criteria established by this section.

(b) Requires that the contract state that:

(1) the board of trustees is entitled to audit the pharmacy benefit manager to verify costs and discounts associated with drug claims, pharmacy benefit manager compliance with contract requirements, and services provided by subcontractors;

(2) the audit is required to be conducted by an independent auditor in accordance with established auditing standards; and

(3) to conduct the audit, the board of trustees and the independent auditor are entitled access to information related to the services and the costs associated with the services performed under the contract, including

access to the pharmacy benefit manager's facilities, records, contracts, medical records, and agreements with subcontractors.

(c) Requires that the contract define the information that the pharmacy benefit manager is required to provide to the board of trustees concerning the audit of the retail, independent, and mail order pharmacies performing services under the contract and describe how the results of these audits must be reported to the board of trustees, including how often the results must be reported. Requires that the contract state whether the pharmacy benefit manager is required to return recovered overpayments to the board of trustees.

(d) Requires that the contract state that any audit of a mail order pharmacy owned by the pharmacy benefit manager is required to be conducted by an independent auditor selected by the board of trustees in accordance with established auditing standards.

SECTION 4. Amends Section 1551.224, Insurance Code, as follows:

Sec. 1551.224. MAIL ORDER REQUIREMENT FOR PRESCRIPTION DRUG COVERAGE PROHIBITED. (a) Prohibits the board of trustees or a health benefit plan under this chapter that provides benefits for prescription drugs from requiring a participant in the group benefits program to purchase a prescription drug through a mail order program.

(b) Requires the board of trustees or a health benefit plan, except as provided by Subsection (c), to require that a participant who chooses to obtain a prescription drug through a retail pharmacy or other method other than by mail order 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. Makes a nonsubstantive change.

(c) Prohibits the board of trustees or a health benefit plan from requiring a participant who obtains a multiple-month supply of a prescription drug from a retail pharmacy under Section 1560.003 to pay a deductible, copayment, coinsurance, or other cost-sharing obligation that differs from the amount the participant pays for a multiple-month supply of that drug through a mail order program.

SECTION 5. 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" and "mail order pharmacy" in this chapter.

Sec. 1560.002. APPLICABILITY OF CHAPTER. Provides that this chapter applies only to a health benefit 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:

(1) the Teacher Retirement System of Texas under Chapter 1575 (Texas Public School Employee Group Benefit Program) or 1579 (Texas School Employees Uniform Group Health Coverage); or

(2) the Employees Retirement System of Texas under Chapter 1551 (Texas Employees Group Benefit Act).

Sec. 1560.003. MULTIPLE-MONTH SUPPLY OF PRESCRIPTION DRUG. (a) Defines "multiple-month supply" in this section.

(b) 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 community retail pharmacy a multiple-month supply of any prescription drug under the same terms and conditions applicable when the prescription drug is obtained from a mail order pharmacy, if the community retail pharmacy agrees to accept reimbursement on exactly the same terms and conditions that apply to a mail order pharmacy.

(c) Provides that this section does not require the issuer of a health benefit plan to contract with a retail pharmacy that does not agree to accept reimbursement on exactly the same terms and conditions that apply to a mail order pharmacy or more than one mail order pharmacy or a community retail pharmacy to provide a multiple-month supply of a prescription drug under the same terms and conditions applicable when the prescription drug is obtained from a mail order pharmacy or agree to accept reimbursement on exactly the same terms and conditions that apply to a mail order pharmacy.

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

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

SECTION 6. Amends Subchapter C, Chapter 1575, Insurance Code, by adding Section 1575.110, as follows:

Sec. 1575.110. PHARMACY BENEFIT MANAGER CONTRACTS. (a) Provides that, in awarding a contract to provide pharmacy benefit manager services under this chapter, the trustee is not required to select the lowest bid but is required to select a contract that meets the criteria established by this section.

(b) Sets forth certain conditions that the contract is required to state.

(c) Requires that the contract define the information that the pharmacy benefit manager is required to provide to the trustee concerning the audit of the retail, independent, and mail order pharmacies performing services under the contract and describe how the results of these audits are required to be reported to the trustee, including how often the results are required to be reported. Requires that the contract state whether the pharmacy benefit manager is required to return recovered overpayments to the trustee.

(d) Requires that the contract state that any audit of a mail order pharmacy owned by the pharmacy benefit manager is required to be conducted by an independent auditor selected by the trustee in accordance with established auditing standards.

SECTION 7. Amends Subchapter B, Chapter 1579, Insurance Code, by adding Section 1579.057, as follows:

Sec. 1579.057. PHARMACY BENEFIT MANAGER CONTRACTS. (a) Provides that, in awarding a contract to provide pharmacy benefit manager services under this chapter, the trustee is not required to select the lowest bid but is required to select a contract that meets the criteria established by this section.

(b) Sets forth certain provisions that the contract is required to state.

(c) Requires that the contract define the information that the pharmacy benefit manager is required to provide to the trustee concerning the audit of the retail, independent, and mail order pharmacies performing services under the contract and describe how the results of these audits are required to be reported to the trustee, including how often the results are required to be reported. Requires that the contract state whether the pharmacy benefit manager is required to return recovered overpayments to the trustee.

(d) Requires that the contract state that any audit of a mail order pharmacy owned by the pharmacy benefit manager is required to be conducted by an independent auditor selected by the trustee in accordance with established auditing standards.

SECTION 8. Amends Subchapter B, Chapter 1601, Insurance Code, by adding Section 1601.064, as follows:

Sec. 1601.064. PHARMACY BENEFIT MANAGER CONTRACTS. (a) Provides that, in awarding a contract to provide pharmacy benefit manager services under this chapter, a system is not required to select the lowest bid but is required to select a contract that meets the criteria established by this section.

(b) Sets forth certain provisions that the contract is required to state.

(c) Requires that the contract define the information that the pharmacy benefit manager is required to provide to the system concerning the audit of the retail, independent, and mail order pharmacies performing services under the contract and describe how the results of these audits are required to be reported to the system, including how often the results are required to be reported. Requires that the contract state whether the pharmacy benefit manager is required to return recovered overpayments to the system.

(d) Requires that the contract state that any audit of a mail order pharmacy owned by the pharmacy benefit manager is required to be conducted by an independent auditor selected by the system in accordance with established auditing standards.

SECTION 9. Provides that Sections 1551.067, 1575.110, 1579.057, and 1601.064, Insurance Code, as added by this Act, apply only to a contract with a pharmacy benefit manager executed or renewed on or after the effective date of this Act.

SECTION 10. Provides that Chapter 1560, Insurance Code, as added by this Act, and Section 1551.224, Insurance Code, as amended by this Act apply only to a health benefit plan that is delivered, issued for delivery, or renewed on or after January 1, 2010. Provides that a health benefit plan that is delivered, issued for delivery, or renewed before January 1, 2010, is covered by the law in effect at the time the health benefit plan was delivered, issued for delivery, or renewed, and that law is continued in effect for that purpose.

SECTION 11. Effective date: September 1, 2009.