BILL ANALYSIS

Senate Research Center

S.B. 332
By: Schwertner et al.
Business & Commerce
5/28/2015
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Health plans hire pharmacy benefit managers (PBMs) to administer pharmacy benefits for insured patients, develop provider networks, and process pharmacy claims. Each PBM uses its own formula based on maximum allowable cost (MAC) to reimburse pharmacies for dispensing generic medications. However, there is no transparency in how a PBM determines which drugs will be reimbursed using a MAC formula, what the price will be, when the price will change, and what sources are used to determine MAC prices. This lack of transparency creates major challenges for pharmacies.

Last session, Senator Schwertner's S.B. 1106 added much needed transparency to MAC pricing in Medicaid managed care. S.B. 332 adds similar transparency protections to the commercial insurance market, but does not apply to the Texas workers' compensation program or any self-funded insurance plans, as defined by the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, S.B. 332 defines the standards required for a drug to be eligible for reimbursement based on MAC, requires a PBM to disclose the sources used to determine MAC pricing, requires a PBM to update MAC prices weekly to be consistent with price changes, requires a PBM to provide each of its pharmacies with convenient access to the pharmacy's MAC list, and requires a PBM to establish an appeals process for a pharmacy to challenge a MAC price. This transparency will ensure that payments to pharmacies for dispensing generic medications are not so low as to drive pharmacies out of business and, thereby, reduce patient access to prescription medications.

S.B. 332 amends current law relating to the use of maximum allowable cost lists related to pharmacy benefits.

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 1369, Insurance Code, by adding Subchapter H, as follows:

SUBCHAPTER H. MAXIMUM ALLOWABLE COST

Sec. 1369.351. DEFINITIONS. Defines "health benefit plan" and "pharmacy benefit manager."

Sec. 1369.352. CERTAIN BENEFITS EXCLUDED. Provides that this subchapter does not apply to maximum allowable costs for pharmacy benefits provided under a Medicaid managed care program operated under Chapter 533 (Implementation of Medicaid Managed Program), Government Code; a Medicaid program operated under Chapter 32 (Medical Assistance Program), Human Resources Code, the child health plan program under Chapter 62 (Child Health Plan for Certain Low-Income Children), Health and Safety Code; the health benefits plan for children under Chapter 63 (Health Benefits Plan for Children), Health and Safety Code; a health benefit plan issued under Chapter 1551 (Texas Employees Group Benefits Act), 1575 (Texas Public School Employees Group

Benefits Program), 1579 (Texas School Employees Uniform Group Health Coverage), or 1601 (Uniform Insurance Benefits Act for Employees of The University of Texas System and The Texas A & M University System); or a workers' compensation insurance policy or other form of providing medical benefits under Title 5 (Workers' Compensation), Labor Code.

Sec. 1369.353. CRITERIA FOR DRUGS ON MAXIMUM ALLOWABLE COST LISTS. Prohibits a health benefit plan issuer or pharmacy benefit manager from including a drug on a maximum cost list unless:

(1) the drug:

(A) has an "A" or "B" rating in the most recent version of the United States Food and Drug Administration's Approved Drug Products with Therapeutic Equivalence Evaluations, also known as the Orange Book; or

(B) is rated "NR" or "NA" or has a similar rating by a nationally recognized reference; and

(2) the drug is:

(A) generally available for purchase by pharmacists and pharmacies in this state from a national or regional wholesaler; and

(B) not obsolete.

Sec. 1369.354. FORMULATION OF MAXIMUM ALLOWABLE COSTS; DISCLOSURES. (a) Provides that in formulating the maximum allowable cost price for a drug, a health benefit plan issuer or pharmacy benefit manager may only use the price of that drug and any drug listed as therapeutically equivalent to that drug in the most recent version of the United States Food and Drug Administration's Approved Drug Products with Therapeutic Equivalence Evaluations, also known as the Orange Book.

(b) Authorizes a health benefit plan issuer or pharmacy benefit manager to, notwithstanding Subsection (a), place on a maximum allowable cost list a drug that has a "B" rating in the most recent version of the United States Food and Drug Administration's Approved Drug Products with Therapeutic Equivalence Evaluations, also known as the Orange Book or an "NR" or "NA" rating or a similar rating by a nationally recognized reference, if a therapeutically equivalent generic drug is unavailable or has limited market presence.

(c) Requires a health benefit plan issuer or pharmacy benefit manager, in accordance with Subsection (d), to disclose to a pharmacist or pharmacy the sources of the pricing data used in formulating maximum allowable cost prices.

(d) Requires that the information described by Subsection (c) be disclosed on the date the health benefit plan issuer or pharmacy benefit manager enters into the contract with the pharmacist or pharmacy and after that contract date, on the request of the pharmacist or pharmacy.

Sec. 1369.355. UPDATES. (a) Requires a health benefit plan issuer or pharmacy benefit manager to establish a process that will in a timely manner eliminate drugs from maximum allowable cost lists or modify maximum allowable cost prices to remain consistent with changes in pricing data used in formulating maximum allowable cost prices and product availability.

(b) Requires a health benefit plan issuer or pharmacy benefit manager to review and update maximum allowable cost price information for each drug at least once every seven days to reflect any modification of maximum allowable cost pricing.

Sec. 1369.356. ACCESS TO MAXIMUM ALLOWABLE COST LISTS. Requires a health benefit plan issuer or pharmacy benefit manager to provide to each pharmacist or pharmacy under contract with the health benefit plan issuer or pharmacy benefit manager a process to readily access the maximum allowable cost list that applies to the pharmacist or pharmacy.

Sec. 1369.357. APPEAL FROM MAXIMUM ALLOWABLE COST PRICE DETERMINATION. (a) Requires a health benefit plan issuer or pharmacy benefit manager to provide in the contract with each pharmacist or pharmacy a procedure for the pharmacist or pharmacy to appeal a maximum allowable cost price of a drug on or before the 10th day after the date a pharmacy benefit claim for the drug is made.

(b) Requires the health benefit plan issuer or pharmacy benefit manager to respond to an appeal described by Subsection (a) in a documented communication not later than the 10th day after the date the appeal is received by the health benefit plan issuer or pharmacy benefit manager.

(c) Requires the health benefit plan issuer or pharmacy benefit manager, if the appeal is successful, to adjust the maximum allowable cost price that is the subject of the appeal effective on the day after the date the appeal is decided, apply the adjusted maximum allowable cost price to all similarly situated pharmacists and pharmacies as determined by the health benefit plan issuer or pharmacy benefit manager, and allow the pharmacist or pharmacy that succeeded in the appeal to reverse and rebill the pharmacy benefit claim giving rise to the appeal.

(d) Requires the health benefit plan issuer or pharmacy benefit manager, if the appeal is not successful, to disclose to the pharmacist or pharmacy each reason the appeal is denied and the national drug code number from the national or regional wholesalers from which the drug is generally available for purchase by pharmacists and pharmacies in this state at the maximum allowable cost price that is the subject of the appeal.

Sec. 1369.358. CONFIDENTIALITY OF MAXIMUM ALLOWABLE COST LIST. Provides that a maximum allowable cost list that applies to a pharmacist or pharmacy and is maintained by a health benefit plan issuer or pharmacy benefit manager is confidential. Prohibits this section from being construed to alter a health benefit plan issuer's or pharmacy benefit manager's obligations under Section 1369.356.

Sec. 1369.359. WAIVER PROHIBITED. Prohibits the provisions of this subchapter from being waived, voided, or nullified by contract.

Sec. 1369.360. REMEDIES NOT EXCLUSIVE. Prohibits this subchapter from being construed to waive a remedy at law available to a pharmacist or pharmacy.

Sec. 1369.361. ENFORCEMENT. Requires the commissioner of insurance to enforce this subchapter.

Sec. 1369.362. LEGISLATIVE DECLARATION. Provides that it is the intent of the legislature that, except with respect to the benefits excluded under Section 1369.352, the requirements contained in this subchapter apply to all health benefit plan issuers and pharmacy benefit managers unless otherwise prohibited by federal law.

SECTION 2. Makes application of this Act prospective to January 1, 2016.

SECTION 3. Effective date: January 1, 2016.