BILL ANALYSIS

C.S.H.B. 1613
By: Gattis
Government Reform
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Pharmacy benefit managers (PBMs) play the important role of "middleman" in administering prescription drug benefit programs for health plans and employers. The state contracts with PBMs to get lower prescription drug costs compared with those of community pharmacies. However, as the PBM industry has evolved large PBMs have started to operate their own mail order pharmacies, which puts them in the position of being both negotiator and provider of a plan's prescription drug services.

PBMs should have a responsibility to help the state get the best deal on prescription drugs. However, since some PBMs run their own pharmacies, the state does not always realize the potential cost savings. In addition, PBMs often offer community pharmacies "take-it-or-leave-it" contracts that provide no option for negotiation. This causes community pharmacies to lose a significant portion of their business to the PBMs' respective mail order pharmacy because patients are either required to go to the mail order pharmacy to get their maintenance drugs or must pay higher co-pays to use their local pharmacy.

This bill allows pharmacies to be reimbursed at an identical rate using the same nationally recognized price benchmarks and other standards. This bill 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 for the same co-pay and supply limits as the PBM's mail order pharmacy. The bill also requires PBMs contracted with ERS and TRS to provide a confidential annual electronic report of the actual acquisition cost of the drugs purchased by the PBMs. Finally, the bill requires PBMs to identify the source, type and amount of all rebates and other monetary benefits related to the health plan received by the PBM from drug manufacturers, and to provide or credit the health plan all of the rebates or monetary benefits within 30 days of receipt by the PBM.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

The bill amends the Insurance Code by prohibiting a health benefit plan, which is offered or administered by the Employees Retirement System of Texas (ERS) or the Teacher Retirement System of Texas (TRS), from requiring an enrollee to obtain drugs or services exclusively from a mail order pharmacy. Likewise, the bill prohibits ERS and TRS from requiring participants in the system's health benefit plan, who choose to obtain prescription drug benefits through a retail pharmacy or other method other than by mail order, from paying an additional deductible, co-payment, coinsurance, or other cost sharing obligation to cover the additional cost of obtaining a prescription drug through that method rather than by mail order. As such, the bill prohibits a health benefit plan from discriminating between mail order and community retail pharmacies by limiting the quantity of a prescription drug that an enrollee may obtain from a pharmacy, by requiring a different co-payment, coinsurance or deductible, or by using different prescription drug formularies for mail order and community retail pharmacies. The bill also defines "community retail pharmacy", "mail order pharmacy" and "prescription drug formulary," for this purpose.

The bill also prohibits a health benefit plan from providing monetary incentives or imposing monetary penalties on enrollees to use a mail order pharmacy and from excluding a pharmacy that otherwise meets the terms and conditions for participation in the health benefit plan. The bill requires health benefit plans to offer all pharmacies the same conditions and terms of participation in the health benefit plan, including drug reimbursement rates.

The bill requires health benefit plans to reimburse pharmacies participating in the health plan by using a current and nationally recognized benchmark index for both brand name and generic prescription drugs. Similarly, the bill requires health benefit plans to use the same benchmark index, including the same national prescription drug codes, to reimburse all pharmacies participating in the health benefit plan, regardless of whether the pharmacy is a mail order or community retail pharmacy.

The bill requires a third-party entity, which manages pharmacy benefits through a mail order pharmacy to enrollees of a health benefit plan, to provide the issuer of the health benefit plan with an annual electronic report. The report is required to contain the actual acquisition cost of all drugs purchased by the managing entity and an identification of the source, types, and amount of all rebates, rebate administrative fees, and other monetary benefits received by the managing entity from a drug manufacturer in relation to the pharmacy benefits under the health benefit plan. The bill also provides that not later than the 30th day after the date the managing entity receives a monetary benefit from a drug manufacturer in relation to the pharmacy benefits under the health benefit plan, the managing entity is required to reimburse or credit the issuer of the health benefit plan the amount of the monetary benefit received by the managing entity.

In turn, the bill provides that a pharmacy benefit manager may designate as confidential any information the pharmacy benefit manage is required to disclose. The bill further states that information designated as confidential may not be disclosed unless ordered by a court, made under seal in a court filing, or made to the commissioner of insurance or the attorney general in connection with an investigation, or any other law.

The bill requires the Texas Department of Insurance (TDI) to investigate complaints received of violations of Chapter 1560 of the Insurance Code. The bill also requires the Commissioner of TDI to issue a written determination of the outcome of the investigation, including whether TDI has taken or intends to take any action. Upon determination that a violation has occurred, the bill requires the Commissioner to impose an administrative penalty which, although not limited in amount under Section 84.022 of the Insurance Code, is not to exceed $1,000 per prescription that was filled or that was not filled in violation of this chapter.

Provides that the change in law made by the bill applies only to health benefit plans delivered, issued for delivery, or renewed on or after January 1, 2008. Provides that a health benefit plan that is delivered, issued for delivery, or renewed before January 1, 2008, is covered by the law in effect at the time the policy was delivered, issued for delivery, or renewed, and that law is continued in effect for that purpose.

EFFECTIVE DATE

September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute modifies the original bill by deleting the words “as a Class E pharmacy” from the definition of “mail order pharmacy.”

The substitute also modifies the original bill by requiring the issuers of health benefit plans, subject to the bill, to require pharmacy benefit managers or other entities managing pharmacy benefits for the plan to provide an annual, electronic report of the actual acquisition cost of drugs purchased by the managing entity in relation to the plan, and to report and pass or credit (within 30 days) any rebates or other monetary benefits received by the managing entity from drug manufacturers in relation to the plan on to the issuer of the health benefit plan.

The substitute adds language to that of the original bill, which provides that a pharmacy benefit manager may designate as confidential any information the pharmacy benefit manage is required to disclose. The substitute further states that information designated as confidential may not be disclosed unless ordered by a court, made under seal in a court filing, or made to the commissioner of insurance or the attorney general in connection with an investigation.