# BILL ANALYSIS

C.S.H.B. 3454
By: Callegari
Government Reform
Committee Report (Substituted)

## BACKGROUND AND PURPOSE

A pharmacy benefit manager (PBM) is a private company that manages the purchasing, dispensing and reimbursing of prescription drugs. PBMs provide their services to health insurers or to large health care purchasers, such as the Employee Retirement System of Texas, or government agencies such as the Health and Human Services Commission. PBM services include negotiating rebates or discounts from pharmaceutical companies, processing claims for prescription drugs, and negotiating price discounts from retail pharmacies. PBMs also develop formularies and manage utilization of drugs through prior authorization or utilization reviews. Several state agencies have hired PBMs to manage the prescription drug portion of their employee health plans. Under these contracts, the PBMs negotiate with pharmacies and drug manufacturers on behalf of the State of Texas.

Currently, the contracts between state agencies and PMBs fail to appropriately reflect the State's interest. To date, state-contracted PBMs have refused to disclose the source and extent of their profits, despite their use of taxpayer dollars to leverage greater profits for themselves. These questionable business practices by state-contracted PBMs inflate drug costs, placing unnecessary pressure on the state budget. Such practices also cause deductibles, co-pays and premiums to rise for beneficiaries of the plans.

This bill reforms the state's PBM contracting process. The bill requires greater transparency in PBM contracts, that PBMs pass-through the full value of discounts from pharmacies and revenue from drug manufacturers on an administrative fee basis, and that the state reserve full auditing rights of a PBM contract.

## 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 Government Code, the Health and Safety Code, and the Texas Insurance Code by defining requirements for contracts between governmental entities that administer state-funded health plans and pharmacy benefit managers (PBMs). The bill affects contracts between PBMs and health plans administered by the Health and Human Services Commission, the Department of State Health Services, the Employee Retirement System of Texas, and the Teacher Retirement System of Texas. The bill defines for its purpose the terms "pharmacy benefit manager," "specialty pharmacy service," and "mail order pharmacy."

The bill requires that a contact entered into between the contracting agency and a pharmacy benefit manager for any program, must provide for the PBM's representation of the state's interest in its dealing with pharmaceutical companies. Any compensation provided by a pharmaceutical company to a PBM must be remitted to the applicable agency for deposit within a designated fund.

Likewise, the bill specifies that that a PBM must pass through to the contracting agency, 100 percent of any revenue associated with distribution of a specialty pharmacy product paid to the PBM. Additionally, the PBM must charge the respective agency on an acquisition cost basis for all specialty pharmacy prescriptions, based on actual inventory costs or wholesale acquisition cost. The PBM must also provide case management for critical disease conditions, as specified by the contract, and agree not to incorporate the costs of case management into the costs assessed for specialty pharmacy product drug ingredients.

The bill also requires that a PBM contract, which includes mail order pharmacy services, must charge the contracting agency on an acquisition cost basis, which may include a dispensing fee for all prescriptions filled by a mail order pharmacy, based on actual inventory costs or wholesale acquisition cost. Similarly, the bill also prohibits the PBM from charging the contracting agency an amount for a brand or generic retail claim payment that is more than the amount the PBM pays a pharmacy in the PBM's retail network for the same claim.

The bill provides that the contracting agency may audit the program's pharmacy benefit claims, the PBM's contracts with pharmacies and pharmaceutical companies, the PBM's utilization management clinical criteria, and the program's mail service purchasing invoices. Nonetheless, the bill states that a contracting agency's authority to audit the program does not affect the state auditor's authority to access information or conduct an audit.

In turn, the bill provides that a PBM may designate as confidential any information the pharmacy benefit manager 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.

## EFFECTIVE DATE

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2007.

## COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute prohibits the PBM from charging the contracting agency an amount for a brand or generic retail claim payment that is more than the amount the PBM pays a pharmacy in the PBM's retail network for the same claim; whereas the original bill, prohibits the PBM from charging the contracting agency an amount for a brand or generic retail claim payment that is more than the *lowest* amount the PBM pays a pharmacy in the PBM's retail network for the same claim.

The substitute adds a provision to that of the original bill, specifying that an agency's authority to audit its PBM program does not affect the state auditor's authority to access information or conduct an audit.