

BILL ANALYSIS

C.S.H.B. 4596
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Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Contracting with a health care organization can be difficult, but contracting with pharmacy benefit managers is the most difficult and this, in part, explains why the four statutory plans covering employees of state agencies and institutions of higher education that provide employee group benefits or uniform insurance benefits approach the contracting process differently. This contracting difficulty also illuminates the need for a more standardized contracting approach. A unified contracting approach will strengthen the state's negotiating position and improve the quality of pharmacy benefit manager services delivered to plan members.

In a report dated August 2008, the Texas State Auditor provides the basic guidelines for a more unified contracting approach. The auditor's report calls for close scrutiny and contract protections to ensure that any conflict arising from the manager's requirement to audit pharmacies and its ownership of the largest pharmacy in its network—the mail order pharmacy—does not harm these statutory plans that provide the coverage, members of those groups, and taxpayers.

The four plans have competing interests and have varied responses to the problem, and none of these entities has been able to remedy the existing conflicts and implement a fully transparent model. Texas needs a unified understanding and definition of terms such as transparency, full-disclosure, pass-through, and unrestricted audit rights. The auditor's report is an excellent starting point for a unified understanding of these terms to ensure that the entirety of state plans receive the optimal benefit and protection.

C.S.H.B. 4596 implements the key components of the Texas State Auditor's recommendations by establishing uniform contracting criteria for pharmacy benefit manager services, thereby significantly improving the negotiating position of the state and ultimately benefiting taxpayers.

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

C.S.H.B. 4596 amends the Insurance Code to establish that, in awarding a contract to provide pharmacy benefit manager services under the Texas Employees Group Benefits Act, the Texas Public School Retired Employees Group Benefits Act, the Texas School Employees Uniform Group Health Coverage Act, or the State University Employees Uniform Insurance Benefits Act, the Employees Retirement System of Texas (ERS) board of trustees, the trustee administering the Teacher Retirement System of Texas (TRS), or The University of Texas System or The Texas A&M University System, respectively, is not required to select the lowest bid but must select a contract that meets the criteria established by the bill's provisions. The bill requires the contract to state whether the pharmacy benefit manager may or may not engage in therapeutic interchange by substituting a prescription drug with a different prescription drug preferred by the pharmacy benefit manager. The bill requires the contract, if the contract authorizes therapeutic interchange, to require the pharmacy benefit manager to maintain documentation of each

instance in which therapeutic interchange is used. The bill requires the contract to state that the pharmacy benefit manager shall disclose in writing the financial and medical reasons for the addition, removal, or change in placement of a prescription drug from the drug formulary used by the manager. The bill requires this disclosure to be made not later than the 30th day before the date that the addition, removal, or change in placement becomes effective.

C.S.H.B. 4596 requires the contract to identify the specialty drugs on the drug formulary used by the manager and to state the specialty drug's associated costs, discounts, and other fees applicable to the manager's services performed under the contract; disclose any policy, practice, or business relationship of the manager that could conflict with the performance of the manager's duties under the contract; describe cost savings initiatives used by the manager, including the methodology and data used to compute any rebate amount that the ERS board of trustees, TRS, or the university system, as applicable, receives from the manager; include a statement defining the maximum allowable cost price list to be used by the manager in performing the contract; and to identify and label the specific information contained in the contract that is considered proprietary information belonging to the manager. The bill requires the contract to state whether the manager has a revenue-sharing agreement concerning the sale of data related to the services performed under the contract or whether the data can be sold by the manager. The bill requires the contract, if data may be sold, to disclose the conditions under which the manager may sell the data and to state that the manager may not disclose any data in connection with the sale of the data before the 30th day after the date the manager has provided written notice of that sale to the ERS board of trustees, TRS, or the university system, as applicable.

C.S.H.B. 4596 requires the contract to state that the ERS board of trustees, TRS, or the university system, as applicable, is entitled to audit the pharmacy benefit manager to verify costs and discounts associated with drug claims, the manager's compliance with contract requirements, and services provided by subcontractors; that the audit must be conducted by an independent auditor in accordance with established auditing standards; and that, to conduct the audit, the ERS board, TRS, or university system, as applicable, 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 manager's facilities, records, contracts, medical records, and agreements with subcontractors. The bill requires the contract to define the information the manager is required to provide to the ERS board, TRS, or university system, as applicable, concerning the audit of the retail, independent, and mail order pharmacies performing services under the contract, and to describe the method by which and the frequency that the results of these audits must be reported to the ERS board, TRS, or university system, as applicable. The bill requires the contract to state whether the manager is required to return recovered overpayments to the ERS board, TRS, or university system, as applicable. The bill requires the contract to state that any audit of a mail order pharmacy owned by the manager must be conducted by an independent auditor selected by the ERS board, TRS, or university system, as applicable, in accordance with established auditing standards.

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 4596 differs from the original by making requirements relating to pharmacy benefit manager contracts applicable also to a contract to provide pharmacy benefit manager services under the Texas School Employees Uniform Group Health Coverage Act administered by the Teacher Retirement System of Texas.