# BILL ANALYSIS

Senate Research Center
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H.B. 438
By: Thompson et al. (Carona)
State Affairs
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Engrossed

## AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Oral medications are usually covered under an insured's prescription drug benefit plan while intravenous medications are usually covered under an insured's health benefit plan. Due to coinsurance provisions, the cost of a drug is generally more expensive under a prescription drug benefit plan than under a health benefit plan.

Recent technological advancements have increased the availability and effectiveness of oral medications for cancer treatment so that they are often preferable to intravenous chemotherapy treatments rather than oral chemotherapy treatment because of the cost disparity of coinsurance to the insured under the insured's prescription versus health benefit plans.

S.B. 1143, passed by the 81st Legislature, directed the Texas Department of Insurance (TDI) to study the disparity in co-payments between orally and intravenously administered chemotherapy treatments. In a report released in August, TDI recommended that the legislature pass legislation to eliminate the disparity in cost sharing requirements for oral and intravenous cancer medications.

H.B. 438 seeks to improve patient access to oral drugs by requiring health insurers to provide coverage for oral medications on a basis no less favorable than intravenously administered or injected medications, which would allow health plans to implement this legislation without reducing patient costs sharing requirements for oral anticancer medications. To ensure that this legislation does not result in increased costs of intravenous treatments, H.B. 438 further requires that, in the event of a cost increase for intravenous treatments, the health plan must justify to TDI that the increase is directly relating to and necessitated by the health plan's increase in cost for the intravenous medication.

H.B. 438 amends current law relating to health benefit plan coverage for orally administered anticancer medications.

## 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 E, as follows:

SUBCHAPTER E. COVERAGE FOR ORALLY ADMINISTERED ANTICANCER MEDICATIONS

Sec. 1369.201. DEFINITIONS. Defines, in this subchapter, "health benefit exchange" and "qualified health plan."

Sec. 1369.202. APPLICABILITY OF SUBCHAPTER. Provides that this subchapter applies only to a health benefit plan, including a small employer health benefit plan written under Chapter 1501 (Health Insurance Portability and Availability Act) or coverage provided by a health group cooperative under Subchapter B (Coalitions and

Cooperatives) of that chapter, 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 by:

(1) an insurance company;

(2) a group hospital service corporation operating under Chapter 842 (Group Hospital Service Corporations);

(3) a fraternal benefit society operating under Chapter 885 (Fraternal Benefit Societies);

(4) a stipulated premium company operating under Chapter 884 (Stipulated Premium Insurance Companies);

(5) an exchange operating under Chapter 942 (Reciprocal and Interinsurance Exchanges);

(6) a Lloyd's plan operating under Chapter 941 (Lloyd's Plan);

(7) a health maintenance organization operating under Chapter 843 (Health Maintenance Organizations); or

(8) an approved nonprofit health corporation that holds a certificate of authority under Chapter 844 (Certification of Certain Nonprofit Health Corporations).

Sec. 1369.203. EXCEPTION. (a) Provides that this subchapter does not apply to:

(1) a plan that provides coverage:

(A) only for fixed indemnity benefits for a specified disease or diseases;

(B) only for accidental death or dismemberment;

(C) for wages or payments in lieu of wages for a period during which an employee is absent from work because of sickness or injury;

(D) as a supplement to a liability insurance policy;

(E) only for dental or vision care; or

(F) only for indemnity for hospital confinement;

(2) a Medicare supplemental policy as defined by Section 1882(g)(1), Social Security Act (42 U.S.C. Section 1395ss);

(3) a workers' compensation insurance policy;

(4) medical payment insurance coverage provided under an automobile insurance policy;

(5) a credit insurance policy;

(6) a limited benefit policy that does not provide coverage for physical examinations or wellness exams;

(7) a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846 (Multiple Employer Welfare Arrangements); or

(8) a long-term care insurance policy, including a nursing home fixed indemnity policy, unless the commissioner determines that the policy provides benefit coverage so comprehensive that the policy is a health benefit plan as described by Section 1369.201.

(b) Provides that this subchapter does not apply to a qualified health plan offered through a health benefit exchange.

Sec. 1369.204. REQUIRED COVERAGE FOR ORALLY ADMINISTERED ANTICANCER MEDICATIONS. (a) Requires a health benefit plan that provides coverage for cancer treatment to provide coverage for a prescribed, orally administered anticancer medication that is used to kill or slow the growth of cancerous cells on a basis no less favorable than intravenously administered or injected cancer medications that are covered as medical benefits by the plan.

(b) Provides that this section does not prohibit a health benefit plan from requiring prior authorization for an orally administered anticancer medication. Prohibits the cost to the covered individual, if an orally administered anticancer medication is authorized, from exceeding the coinsurance or copayment that would be applied to a chemotherapy or other cancer treatment visit.

(c) Prohibits a health benefit plan issuer from reclassifying anticancer medications or increase a coinsurance, copayment, deductible, or other out-of-pocket expense imposed on anticancer medications to achieve compliance with this section. Requires any plan change that otherwise increases an out-of-pocket expense applied to anticancer medications to also be applied to the majority of comparable medical or pharmaceutical benefits under the plan.

(d) Provides that this section does not prohibit a health benefit plan issuer from increasing cost-sharing for all benefits, including anticancer treatments.

SECTION 2. Makes application of Subchapter E, Chapter 1369, Insurance Code, as added by this Act, prospective to January 1, 2012.

SECTION 3. Effective date: September 1, 2011.