BILL ANALYSIS

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S.B. 332
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Business and Commerce
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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.

As proposed, 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. CRITERIA FOR DRUGS ON MAXIMUM ALLOWABLE COST LISTS. Provides that a health benefit plan issuer or pharmacy benefit manager may not include a drug on a maximum allowable cost list unless the drug is listed as "A" or "B" rated 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, is rated "NR" or "NA" by Medi-Span, or has a similar rating by a nationally recognized reference, and the drug is generally available for purchase by pharmacists and pharmacies in this state from a national or regional wholesaler and is not obsolete.

Sec. 1369.353. 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) Prohibits this section, notwithstanding Subsection (a), from being construed to prohibit a health benefit plan issuer or pharmacy benefit manager from placing on a maximum allowable cost list a drug that has an "NR" or "NA" rating by Medi-Span or a similar rating by a nationally recognized reference.

(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. 1369.354. 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 conduct a weekly review and update of the maximum allowable cost price for each drug on the maximum allowable cost list.

Sec. 1369.355. 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 convenient access to the maximum allowable cost list that applies to the pharmacist or pharmacy.

Sec. 1369.356. 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 14th 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 14th 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 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 and any other claim based on the maximum allowable cost price that is the subject of the appeal and that is made after the date of the 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. 1369.357. CONFIDENTIALITY OF MAXIMUM ALLOWABLE COST LIST. Provides that, except as provided by Section 1369.355, 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.

Sec. 1369.358. WAIVER PROHIBITED. Prohibits the provisions of this subchapter from being waived, voided, or nullified by contract.

Sec. 1369.359. REMEDIES NOT EXCLUSIVE. Prohibits this subchapter to be construed to waive a remedy at law available to a pharmacist or pharmacy.

Sec. 1369.360. ENFORCEMENT. Requires the commissioner of insurance to enforce this subchapter.

Sec. 1369.361. LEGISLATIVE DECLARATION. Provides that it is the intent of the legislature that 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.