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S.B. No. 332

A BILL TO BE ENTITLED

AN ACT

relating to the use of maximum allowable cost lists related to pharmacy benefits.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 1369, Insurance Code, is amended by adding Subchapter H to read as follows:

SUBCHAPTER H. MAXIMUM ALLOWABLE COST

Sec. 1369.351. DEFINITIONS. In this subchapter:

(1) "Health benefit plan" has the meaning assigned by Section 1369.251, as added by Chapter 915 (H.B. 1358), Acts of the 83rd Legislature, Regular Session, 2013.

(2) "Pharmacy benefit manager" has the meaning assigned by Section 4151.151.

Sec. 1369.352. CERTAIN BENEFITS EXCLUDED. This subchapter does not apply to maximum allowable costs for pharmacy benefits provided under:

(1) a Medicaid managed care program operated under Chapter 533, Government Code;

(2) a Medicaid program operated under Chapter 32, Human Resources Code;

(3) the child health plan program under Chapter 62, Health and Safety Code;

(4) the health benefits plan for children under Chapter 63, Health and Safety Code;

1 (5) a health benefit plan issued under Chapter 1551,
2 1575, 1579, or 1601; or

3 (6) a workers' compensation insurance policy or other
4 form of providing medical benefits under Title 5, Labor Code.

5 Sec. 1369.353. CRITERIA FOR DRUGS ON MAXIMUM ALLOWABLE COST
6 LISTS. A health benefit plan issuer or pharmacy benefit manager may
7 not include a drug on a maximum allowable cost list unless:

8 (1) the drug:

9 (A) has an "A" or "B" rating in the most recent
10 version of the United States Food and Drug Administration's
11 Approved Drug Products with Therapeutic Equivalence Evaluations,
12 also known as the Orange Book; or

13 (B) is rated "NR" or "NA" or has a similar rating
14 by a nationally recognized reference; and

15 (2) the drug is:

16 (A) generally available for purchase by
17 pharmacists and pharmacies in this state from a national or
18 regional wholesaler; and

19 (B) not obsolete.

20 Sec. 1369.354. FORMULATION OF MAXIMUM ALLOWABLE COSTS;
21 DISCLOSURES. (a) In formulating the maximum allowable cost price
22 for a drug, a health benefit plan issuer or pharmacy benefit manager
23 may only use the price of that drug and any drug listed as
24 therapeutically equivalent to that drug in the most recent version
25 of the United States Food and Drug Administration's Approved Drug
26 Products with Therapeutic Equivalence Evaluations, also known as
27 the Orange Book.

1 (b) Notwithstanding Subsection (a), if a therapeutically
2 equivalent generic drug is unavailable or has limited market
3 presence, a health benefit plan issuer or pharmacy benefit manager
4 may place on a maximum allowable cost list a drug that has:

5 (1) a "B" rating in the most recent version of the
6 United States Food and Drug Administration's Approved Drug Products
7 with Therapeutic Equivalence Evaluations, also known as the Orange
8 Book; or

9 (2) an "NR" or "NA" rating or a similar rating by a
10 nationally recognized reference.

11 (c) A health benefit plan issuer or pharmacy benefit manager
12 must, in accordance with Subsection (d), disclose to a pharmacist
13 or pharmacy the sources of the pricing data used in formulating
14 maximum allowable cost prices.

15 (d) The information described by Subsection (c) must be
16 disclosed:

17 (1) on the date the health benefit plan issuer or
18 pharmacy benefit manager enters into the contract with the
19 pharmacist or pharmacy; and

20 (2) after that contract date, on the request of the
21 pharmacist or pharmacy.

22 Sec. 1369.355. UPDATES. (a) A health benefit plan issuer
23 or pharmacy benefit manager shall establish a process that will in a
24 timely manner eliminate drugs from maximum allowable cost lists or
25 modify maximum allowable cost prices to remain consistent with
26 changes in pricing data used in formulating maximum allowable cost
27 prices and product availability.

1 (b) A health benefit plan issuer or pharmacy benefit manager
2 shall review and update maximum allowable cost price information
3 for each drug at least once every seven days to reflect any
4 modification of maximum allowable cost pricing.

5 Sec. 1369.356. ACCESS TO MAXIMUM ALLOWABLE COST LISTS. A
6 health benefit plan issuer or pharmacy benefit manager must provide
7 to each pharmacist or pharmacy under contract with the health
8 benefit plan issuer or pharmacy benefit manager a process to
9 readily access the maximum allowable cost list that applies to the
10 pharmacist or pharmacy.

11 Sec. 1369.357. APPEAL FROM MAXIMUM ALLOWABLE COST PRICE
12 DETERMINATION. (a) A health benefit plan issuer or pharmacy
13 benefit manager must provide in the contract with each pharmacist
14 or pharmacy a procedure for the pharmacist or pharmacy to appeal a
15 maximum allowable cost price of a drug on or before the 10th day
16 after the date a pharmacy benefit claim for the drug is made.

17 (b) The health benefit plan issuer or pharmacy benefit
18 manager shall respond to an appeal described by Subsection (a) in a
19 documented communication not later than the 10th day after the date
20 the appeal is received by the health benefit plan issuer or pharmacy
21 benefit manager.

22 (c) If the appeal is successful, the health benefit plan
23 issuer or pharmacy benefit manager shall:

24 (1) adjust the maximum allowable cost price that is
25 the subject of the appeal effective on the day after the date the
26 appeal is decided;

27 (2) apply the adjusted maximum allowable cost price to

1 all similarly situated pharmacists and pharmacies as determined by
2 the health benefit plan issuer or pharmacy benefit manager; and

3 (3) allow the pharmacist or pharmacy that succeeded in
4 the appeal to reverse and rebill the pharmacy benefit claim giving
5 rise to the appeal.

6 (d) If the appeal is not successful, the health benefit plan
7 issuer or pharmacy benefit manager shall disclose to the pharmacist
8 or pharmacy:

9 (1) each reason the appeal is denied; and

10 (2) the national drug code number from the national or
11 regional wholesalers from which the drug is generally available for
12 purchase by pharmacists and pharmacies in this state at the maximum
13 allowable cost price that is the subject of the appeal.

14 Sec. 1369.358. CONFIDENTIALITY OF MAXIMUM ALLOWABLE COST
15 LIST. A maximum allowable cost list that applies to a pharmacist or
16 pharmacy and is maintained by a health benefit plan issuer or
17 pharmacy benefit manager is confidential. This section may not be
18 construed to alter a health benefit plan issuer's or pharmacy
19 benefit manager's obligations under Section 1369.356.

20 Sec. 1369.359. WAIVER PROHIBITED. The provisions of this
21 subchapter may not be waived, voided, or nullified by contract.

22 Sec. 1369.360. REMEDIES NOT EXCLUSIVE. This subchapter may
23 not be construed to waive a remedy at law available to a pharmacist
24 or pharmacy.

25 Sec. 1369.361. ENFORCEMENT. The commissioner shall enforce
26 this subchapter.

27 Sec. 1369.362. LEGISLATIVE DECLARATION. It is the intent

1 of the legislature that, except with respect to the benefits
2 excluded under Section 1369.352, the requirements contained in this
3 subchapter apply to all health benefit plan issuers and pharmacy
4 benefit managers unless otherwise prohibited by federal law.

5 SECTION 2. This Act applies only to a contract between a
6 health benefit plan issuer or a pharmacy benefit manager and a
7 pharmacist or pharmacy entered into or renewed on or after January
8 1, 2016. A contract entered into or renewed before January 1, 2016,
9 is governed by the law as it existed immediately before the
10 effective date of this Act, and that law is continued in effect for
11 that purpose.

12 SECTION 3. This Act takes effect January 1, 2016.