

By: Schwertner

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

(1) the drug:

(A) 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;

(B) is rated "NR" or "NA" by Medi-Span; or

(C) has a similar rating by a nationally recognized reference; and

1 (2) the drug is:

2 (A) generally available for purchase by
3 pharmacists and pharmacies in this state from a national or
4 regional wholesaler; and

5 (B) not obsolete.

6 Sec. 1369.353. FORMULATION OF MAXIMUM ALLOWABLE COSTS;
7 DISCLOSURES. (a) In formulating the maximum allowable cost price
8 for a drug, a health benefit plan issuer or pharmacy benefit manager
9 may only use the price of that drug and any drug listed as
10 therapeutically equivalent to that drug in the most recent version
11 of the United States Food and Drug Administration's Approved Drug
12 Products with Therapeutic Equivalence Evaluations, also known as
13 the Orange Book.

14 (b) Notwithstanding Subsection (a), this section may not be
15 construed to prohibit a health benefit plan issuer or pharmacy
16 benefit manager from placing on a maximum allowable cost list a drug
17 that has an "NR" or "NA" rating by Medi-Span or a similar rating by a
18 nationally recognized reference.

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

23 (d) The information described by Subsection (c) must be
24 disclosed:

25 (1) on the date the health benefit plan issuer or
26 pharmacy benefit manager enters into the contract with the
27 pharmacist or pharmacy; and

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

3 Sec. 1369.354. UPDATES. (a) A health benefit plan issuer or
4 pharmacy benefit manager shall establish a process that will in a
5 timely manner eliminate drugs from maximum allowable cost lists or
6 modify maximum allowable cost prices to remain consistent with
7 changes in pricing data used in formulating maximum allowable cost
8 prices and product availability.

9 (b) A health benefit plan issuer or pharmacy benefit manager
10 shall conduct a weekly review and update of the maximum allowable
11 cost price for each drug on the maximum allowable cost list.

12 Sec. 1369.355. ACCESS TO MAXIMUM ALLOWABLE COST LISTS. A
13 health benefit plan issuer or pharmacy benefit manager must provide
14 to each pharmacist or pharmacy under contract with the health
15 benefit plan issuer or pharmacy benefit manager convenient access
16 to the maximum allowable cost list that applies to the pharmacist or
17 pharmacy.

18 Sec. 1369.356. APPEAL FROM MAXIMUM ALLOWABLE COST PRICE
19 DETERMINATION. (a) A health benefit plan issuer or pharmacy
20 benefit manager must provide in the contract with each pharmacist
21 or pharmacy a procedure for the pharmacist or pharmacy to appeal a
22 maximum allowable cost price of a drug on or before the 14th day
23 after the date a pharmacy benefit claim for the drug is made.

24 (b) The health benefit plan issuer or pharmacy benefit
25 manager shall respond to an appeal described by Subsection (a) in a
26 documented communication not later than the 14th day after the date
27 the appeal is received by the health benefit plan issuer or pharmacy

1 benefit manager.

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

4 (1) adjust the maximum allowable cost price that is
5 the subject of the appeal effective on the date the appeal is
6 decided;

7 (2) apply the adjusted maximum allowable cost price to
8 all similarly situated pharmacists and pharmacies as determined by
9 the health benefit plan issuer or pharmacy benefit manager; and

10 (3) allow the pharmacist or pharmacy that succeeded in
11 the appeal to reverse and rebill the pharmacy benefit claim giving
12 rise to the appeal and any other claim based on the maximum
13 allowable cost price that is the subject of the appeal and that is
14 made after the date of the claim giving rise to the appeal.

15 (d) If the appeal is not successful, the health benefit plan
16 issuer or pharmacy benefit manager shall disclose to the pharmacist
17 or pharmacy:

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

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

23 Sec. 1369.357. CONFIDENTIALITY OF MAXIMUM ALLOWABLE COST
24 LIST. Except as provided by Section 1369.355, a maximum allowable
25 cost list that applies to a pharmacist or pharmacy and is maintained
26 by a health benefit plan issuer or pharmacy benefit manager is
27 confidential.

1 Sec. 1369.358. WAIVER PROHIBITED. The provisions of this
2 subchapter may not be waived, voided, or nullified by contract.

3 Sec. 1369.359. REMEDIES NOT EXCLUSIVE. This subchapter may
4 not be construed to waive a remedy at law available to a pharmacist
5 or pharmacy.

6 Sec. 1369.360. ENFORCEMENT. The commissioner shall enforce
7 this subchapter.

8 Sec. 1369.361. LEGISLATIVE DECLARATION. It is the intent
9 of the legislature that the requirements contained in this
10 subchapter apply to all health benefit plan issuers and pharmacy
11 benefit managers unless otherwise prohibited by federal law.

12 SECTION 2. This Act applies only to a contract between a
13 health benefit plan issuer or a pharmacy benefit manager and a
14 pharmacist or pharmacy entered into or renewed on or after January
15 1, 2016. A contract entered into or renewed before January 1, 2016,
16 is governed by the law as it existed immediately before the
17 effective date of this Act, and that law is continued in effect for
18 that purpose.

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