

1-1 By: Schwertner S.B. No. 332
 1-2 (In the Senate - Filed January 22, 2015; February 2, 2015,
 1-3 read first time and referred to Committee on Business and Commerce;
 1-4 April 1, 2015, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 7, Nays 0; April 1, 2015,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10			X	
1-11			X	
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 332 By: Schwertner

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to the use of maximum allowable cost lists related to
 1-22 pharmacy benefits.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Chapter 1369, Insurance Code, is amended by
 1-25 adding Subchapter H to read as follows:

1-26 SUBCHAPTER H. MAXIMUM ALLOWABLE COST

1-27 Sec. 1369.351. DEFINITIONS. In this subchapter:

1-28 (1) "Health benefit plan" has the meaning assigned by
 1-29 Section 1369.251, as added by Chapter 915 (H.B. 1358), Acts of the
 1-30 83rd Legislature, Regular Session, 2013.

1-31 (2) "Pharmacy benefit manager" has the meaning
 1-32 assigned by Section 4151.151.

1-33 Sec. 1369.352. CERTAIN BENEFITS EXCLUDED. This subchapter
 1-34 does not apply to maximum allowable costs for pharmacy benefits
 1-35 provided under:

1-36 (1) a Medicaid managed care program operated under
 1-37 Chapter 533, Government Code;

1-38 (2) a Medicaid program operated under Chapter 32,
 1-39 Human Resources Code;

1-40 (3) the child health plan program under Chapter 62,
 1-41 Health and Safety Code;

1-42 (4) the health benefits plan for children under
 1-43 Chapter 63, Health and Safety Code;

1-44 (5) a health benefit plan issued under Chapter 1551,
 1-45 1575, 1579, or 1601; or

1-46 (6) a workers' compensation insurance policy or other
 1-47 form of providing medical benefits under Title 5, Labor Code.

1-48 Sec. 1369.353. CRITERIA FOR DRUGS ON MAXIMUM ALLOWABLE COST
 1-49 LISTS. A health benefit plan issuer or pharmacy benefit manager may
 1-50 not include a drug on a maximum allowable cost list unless:

1-51 (1) the drug:

1-52 (A) has an "A" or "B" rating in the most recent
 1-53 version of the United States Food and Drug Administration's
 1-54 Approved Drug Products with Therapeutic Equivalence Evaluations,
 1-55 also known as the Orange Book; or

1-56 (B) is rated "NR" or "NA" or has a similar rating
 1-57 by a nationally recognized reference; and

1-58 (2) the drug is:

1-59 (A) generally available for purchase by
 1-60 pharmacists and pharmacies in this state from a national or

2-1 regional wholesaler; and
 2-2 (B) not obsolete.
 2-3 Sec. 1369.354. FORMULATION OF MAXIMUM ALLOWABLE COSTS;
 2-4 DISCLOSURES. (a) In formulating the maximum allowable cost price
 2-5 for a drug, a health benefit plan issuer or pharmacy benefit manager
 2-6 may only use the price of that drug and any drug listed as
 2-7 therapeutically equivalent to that drug in the most recent version
 2-8 of the United States Food and Drug Administration's Approved Drug
 2-9 Products with Therapeutic Equivalence Evaluations, also known as
 2-10 the Orange Book.
 2-11 (b) Notwithstanding Subsection (a), if a therapeutically
 2-12 equivalent generic drug is unavailable or has limited market
 2-13 presence, a health benefit plan issuer or pharmacy benefit manager
 2-14 may place on a maximum allowable cost list a drug that has:
 2-15 (1) a "B" rating in the most recent version of the
 2-16 United States Food and Drug Administration's Approved Drug Products
 2-17 with Therapeutic Equivalence Evaluations, also known as the Orange
 2-18 Book; or
 2-19 (2) an "NR" or "NA" rating or a similar rating by a
 2-20 nationally recognized reference.
 2-21 (c) A health benefit plan issuer or pharmacy benefit manager
 2-22 must, in accordance with Subsection (d), disclose to a pharmacist
 2-23 or pharmacy the sources of the pricing data used in formulating
 2-24 maximum allowable cost prices.
 2-25 (d) The information described by Subsection (c) must be
 2-26 disclosed:
 2-27 (1) on the date the health benefit plan issuer or
 2-28 pharmacy benefit manager enters into the contract with the
 2-29 pharmacist or pharmacy; and
 2-30 (2) after that contract date, on the request of the
 2-31 pharmacist or pharmacy.
 2-32 Sec. 1369.355. UPDATES. (a) A health benefit plan issuer
 2-33 or pharmacy benefit manager shall establish a process that will in a
 2-34 timely manner eliminate drugs from maximum allowable cost lists or
 2-35 modify maximum allowable cost prices to remain consistent with
 2-36 changes in pricing data used in formulating maximum allowable cost
 2-37 prices and product availability.
 2-38 (b) A health benefit plan issuer or pharmacy benefit manager
 2-39 shall review and update maximum allowable cost price information
 2-40 for each drug at least once every seven days to reflect any
 2-41 modification of maximum allowable cost pricing.
 2-42 Sec. 1369.356. ACCESS TO MAXIMUM ALLOWABLE COST LISTS. A
 2-43 health benefit plan issuer or pharmacy benefit manager must provide
 2-44 to each pharmacist or pharmacy under contract with the health
 2-45 benefit plan issuer or pharmacy benefit manager a process to
 2-46 readily access the maximum allowable cost list that applies to the
 2-47 pharmacist or pharmacy.
 2-48 Sec. 1369.357. APPEAL FROM MAXIMUM ALLOWABLE COST PRICE
 2-49 DETERMINATION. (a) A health benefit plan issuer or pharmacy
 2-50 benefit manager must provide in the contract with each pharmacist
 2-51 or pharmacy a procedure for the pharmacist or pharmacy to appeal a
 2-52 maximum allowable cost price of a drug on or before the 10th day
 2-53 after the date a pharmacy benefit claim for the drug is made.
 2-54 (b) The health benefit plan issuer or pharmacy benefit
 2-55 manager shall respond to an appeal described by Subsection (a) in a
 2-56 documented communication not later than the 10th day after the date
 2-57 the appeal is received by the health benefit plan issuer or pharmacy
 2-58 benefit manager.
 2-59 (c) If the appeal is successful, the health benefit plan
 2-60 issuer or pharmacy benefit manager shall:
 2-61 (1) adjust the maximum allowable cost price that is
 2-62 the subject of the appeal effective on the day after the date the
 2-63 appeal is decided;
 2-64 (2) apply the adjusted maximum allowable cost price to
 2-65 all similarly situated pharmacists and pharmacies as determined by
 2-66 the health benefit plan issuer or pharmacy benefit manager; and
 2-67 (3) allow the pharmacist or pharmacy that succeeded in
 2-68 the appeal to reverse and rebill the pharmacy benefit claim giving
 2-69 rise to the appeal.

3-1 (d) If the appeal is not successful, the health benefit plan
3-2 issuer or pharmacy benefit manager shall disclose to the pharmacist
3-3 or pharmacy:

3-4 (1) each reason the appeal is denied; and

3-5 (2) the national drug code number from the national or
3-6 regional wholesalers from which the drug is generally available for
3-7 purchase by pharmacists and pharmacies in this state at the maximum
3-8 allowable cost price that is the subject of the appeal.

3-9 Sec. 1369.358. CONFIDENTIALITY OF MAXIMUM ALLOWABLE COST
3-10 LIST. A maximum allowable cost list that applies to a pharmacist or
3-11 pharmacy and is maintained by a health benefit plan issuer or
3-12 pharmacy benefit manager is confidential. This section may not be
3-13 construed to alter a health benefit plan issuer's or pharmacy
3-14 benefit manager's obligations under Section 1369.356.

3-15 Sec. 1369.359. WAIVER PROHIBITED. The provisions of this
3-16 subchapter may not be waived, voided, or nullified by contract.

3-17 Sec. 1369.360. REMEDIES NOT EXCLUSIVE. This subchapter may
3-18 not be construed to waive a remedy at law available to a pharmacist
3-19 or pharmacy.

3-20 Sec. 1369.361. ENFORCEMENT. The commissioner shall enforce
3-21 this subchapter.

3-22 Sec. 1369.362. LEGISLATIVE DECLARATION. It is the intent
3-23 of the legislature that, except with respect to the benefits
3-24 excluded under Section 1369.352, the requirements contained in this
3-25 subchapter apply to all health benefit plan issuers and pharmacy
3-26 benefit managers unless otherwise prohibited by federal law.

3-27 SECTION 2. This Act applies only to a contract between a
3-28 health benefit plan issuer or a pharmacy benefit manager and a
3-29 pharmacist or pharmacy entered into or renewed on or after January
3-30 1, 2016. A contract entered into or renewed before January 1, 2016,
3-31 is governed by the law as it existed immediately before the
3-32 effective date of this Act, and that law is continued in effect for
3-33 that purpose.

3-34 SECTION 3. This Act takes effect January 1, 2016.

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