BILL ANALYSIS

C.S.H.B. 2504
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Insurance
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Many insurers utilize step therapy or "fail-first" requirements in an effort to find alternatives to certain high-cost prescription drugs before covering the drug that was prescribed. This can produce modest savings but creates access barriers to essential medications for patients with serious and persistent mental illnesses. Individuals with these mental illnesses face a considerably higher risk of adverse consequences from being forced to "fail" on other drugs before the drug that was actually prescribed to them is covered. Many of these consequences, such as hospitalizations, homelessness, and incarceration, actually lead to increased state expenditures. C.S.H.B. 2504 seeks to reduce barriers to care and improve the overall quality of life for adults with serious mental illnesses by placing restrictions on step therapy protocols and "fail-first" requirements.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2504 amends the Insurance Code to prohibit an applicable health benefit plan that provides coverage for prescription drugs to treat a serious mental illness from requiring an enrollee who is 18 years of age or older to do either of the following before providing coverage of an FDA-approved drug prescribed to treat the enrollee's diagnosis of a serious mental illness:

- fail to successfully respond to more than one different drug for each drug prescribed, excluding the generic or brand name equivalent of the prescribed drug; or
- prove a history of failure of more than one different drug for each drug prescribed, excluding the generic or brand name equivalent of the prescribed drug.

C.S.H.B. 2504 also limits an issuer's authority to implement a step therapy protocol for these drugs. The issuer may implement such a protocol to require a trial of a generic or brand name equivalent of a prescribed prescription drug as a condition of continued coverage of the drug only once a plan year and only if the equivalent drug is added to the plan's drug formulary.

C.S.H.B. 2504 applies only to a health benefit plan delivered, issued for delivery, or renewed on or after January 1, 2022.

EFFECTIVE DATE

September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2504 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute revises the original's provisions prohibiting an applicable health benefit plan from using a "fail-first" policy for drugs prescribed as a course of treatment for a serious mental illness for an enrollee who is 18 years of age or older to instead limit an insurer's authority to utilize a "fail-first" policy in such a way that the insurer may only require that the enrollee fail one other drug before providing coverage of the prescribed drug.

The substitute excludes from the limitation on "fail-first" policies drugs that are generic or brand name equivalents of the prescribed drug, whereas the original did not make such a distinction. Accordingly, the substitute omits the provision from the original establishing that the bill's provisions do not affect a pharmacist's authority to substitute a generic equivalent or one or more interchangeable biological products for a drug prescribed for a serious mental illness.

The substitute includes provisions that did not appear in the original limiting the authority of an applicable health benefit plan issuer to implement a step therapy protocol.

The substitute revises the original's provision establishing the drugs to which the bill's restrictions apply by omitting the specification that the drug was determined by the prescribing physician or health care provider in consultation with the enrollee as the most appropriate course of treatment for the serious mental illness.

The substitute changes the applicability of the bill's provisions. Whereas the original established a new subchapter with its own applicability, the substitute amends an existing subchapter with separate and already established applicability provisions. In doing so, the bill's provisions no longer apply to the following as they did in the original:

- a Lloyd's plan;
- a small employer health benefit plan subject to the Health Insurance Portability and Availability Act;
- a standard consumer choice health benefit plan;
- a basic coverage plan under the Texas Employees Group Benefits Act;
- TRS-Care and TRS-Active Care;
- a plan providing basic coverage under the State University Employees Uniform Insurance Benefits Act;
- health benefits provided by or through a church benefits board;
- group health coverage made available by a school district under TRS-Active Care;
- a regional or local health care program; or
- a self-funded health benefit plan sponsored by a professional employer organization.

Additionally, this existing subchapter has already established exceptions which now apply to the bill's provisions. The substitute also omits a provision from the original specifying that the bill applies to coverage under a group health benefit plan provided to a Texas resident regardless of whether the group policy, agreement, or contract is delivered, issued for delivery, or renewed in Texas.