SUBJECT: Regulating pharmacy benefit manager contracts with state health plans

COMMITTEE: Government Reform — favorable, without amendment

VOTE: 6 ayes — Callegari, Pitts, Leibowitz, Miles, Rodriguez, W. Smith

0 nays

1 absent — Berman

SENATE VOTE: On final passage, May 1 — 31-0

WITNESSES: For — None

Against — *(Registered, but did not testify*: Sabrina Brown, CVS/Caremark; Chuck Girard, Medco Health Solutions; Shelton Green, Texas Association of Business)

BACKGROUND: The state purchases prescription drugs for the Medicaid program administered by the Department of Health and Human Services, programs offered through the Department of State Health Services and the health insurance plans for state employees, teachers, and retirees.

The state relies on pharmacy benefit managers (PBMs) to administer prescription drug programs for health plans and other state programs. PBMs have evolved during the past three decades from providers of community pharmacy network coordination and claims administration services to large, publicly owned companies marketing an array of services. PBMs now routinely offer clients expanded services, such as drug formulary development, manufacturer rebate negotiation and collection, specialty pharmacy distribution, and mail-order prescription delivery options.

DIGEST: SB 1834 would require a PBM to charge a contracting agency on an acquisition cost basis, including a dispensing fee, for all mail order pharmacy orders based on actual inventory costs or wholesale acquisition

costs. The PBM could designate as confidential any information it was

required to disclose in order to comply.

SB 1834 would amend chapters in the Government Code, Health and Safety Code, and Insurance Code on state health and health insurance programs to:

- define “mail order pharmacy,” “specialty pharmacy service,” and “pharmacy benefit manager”;
- require return of 100 percent of revenue from specialty pharmacy products to the state general fund or the respective insurance funds; and
- require audit of PBM operations.

A pharmacy benefit manager would be defined as a person, other than a pharmacy or pharmacist, who administered a pharmacy benefit program.

A specialty pharmacy service would be a service offered by a PBM that:

- involved a chronic condition;
- had unusually high treatment costs; or
- required management of complex care issues.

A mail order pharmacy would be defined as a Class A or Class E pharmacy regulated by Occupations Code, ch. 560 that primarily delivered prescription drugs to an enrollee through the U. S. Postal Service or a commercial delivery service.

The bill also would allow an audit of:

- a program’s pharmacy benefit claims;
- PBM contracts with pharmaceutical manufacturers and labelers;
- PBM utilization management clinical criteria; and
- mail order purchasing invoices related to benefits provided under the program.

The audit would be conducted by an auditor selected by the commission or administrator of the health or health insurance program, but the audit would not preclude the authority of the State Auditor’s Office to conduct additional audits.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take

effect September 1, 2007, and would apply only to PBM contracts executed or renewed on or after that date.

SUPPORTERS SAY:

SB 1834 would provide transparency to help control health care costs because PBMs have been one of the biggest drivers of increased costs to taxpayers. The state would have to make transparency mandatory in all new contracts or renewals with PBMs. This would make it possible for state negotiators to know what medical services they were purchasing and to leverage the large number of covered beneficiaries to gain the best price.

The bill would follow the lead of private industries, which have developed minimum standards to accredit and police PBMs. The blueprint for this program, called the Transparency in Pharmaceutical Purchasing Solutions (TIPPS) Initiative, was developed by the HR Policy Association, a group that includes senior human resources executives from most major industrial groups in the country. Dell, Home Depot, and Caterpillar are among the companies that used the TIPPS standards in negotiating their prescription drug benefit plans to save money.

PBMs should be required to charge the state no more than their acquisition costs and pass through 100 percent of the revenue generated by contractual agreements with pharmaceutical companies that make specialty medical products. So far, PBMs have not provided the needed transparency and cost data to determine whether aggregate savings have been achieved.

A March 2007 *Journal of Managed Care Pharmacy* article compared pharmacy claim records from two Texas benefit plans for fiscal 2004. The conclusion was that lower unit pricing through mail-order channels did not translate into significant cost reductions for the state plans. Some generic drug prices actually were higher through the mail order pharmacy companies than through community pharmacies.

Studies cited by PBMs, including studies by the Federal Trade Commission and Government Accountability Office, do not include and evaluate the actual cost data from PBMs. The PBMs historically have refused to provide the federal government with the needed data. Without this essential element, it is impossible to determine if PBM self-referred mail order and specialty programs actually save money.

OPPONENTS SAY:

SB 1834 would reduce the flexibility to negotiate PBM contracts and ultimately could cost the state more money in prescription drug costs. Negotiators for the Employees Retirement System of Texas, Teacher Retirement System and the large health and human service agencies are sophisticated purchasers of health care. They should have the ability to solicit bids that are consistent with the framework of SB 1834 and to seek bids based on other criteria. Then the purchaser could select the approach that provided the best deal.

Even the HR Policy Association TIPPS Initiative recognizes the need for flexibility in seeking bids. According to the consulting firm for the initiative, only five of about 60 firms participating in the initiative have signed a PBM contract based on the standards. All those contracts are acknowledged to be "hybrid" arrangements that vary to some degree from the standards. More participating companies have opted to renew contracts with their PBMs on terms other than the TIPPS standards because they recognize that the TIPPS model does not necessarily result in cost savings for their prescription drug plans.

As currently worded, SB 1834 would require the PBM to remit all manufacturer revenue to the state that it received from almost 750 clients for specialty products. In other words, the bill would require that the PBM pass through all revenue earned on all other clients' business. Also, the bill frequently refers to "wholesale acquisition cost" without defining it.

According to a study by economist Ray Perryman, PBMs generate substantial savings for Texans, including about $3 billion in prescription drug expenditures in 2005. The report also notes that PBMs help reduce the number of uninsured Texans by decreasing the cost of prescription drugs. Texas has become a hub for PBM mail-order pharmacy operations, where 727 PBM mail-order pharmacists fill thousands of prescriptions daily.

NOTES:

HB 1613 by Gattis, et al., which would eliminate ERS and TRS co-payment and other fees as an additional cost for prescriptions purchased at a community pharmacy rather than through a PBM's mail order pharmacy,

passed the House by 135-2 on May 10 and is pending in the Senate State Affairs Committee.