SUBJECT: Maximum allowable cost lists in Medicaid managed care

COMMITTEE: Public Health — favorable, without amendment

VOTE: 9 ayes — Kolkhorst, Naishtat, Collier, Cortez, S. Davis, Guerra, S. King, J.D. Sheffield, Zedler

0 nays

2 absent — Coleman, Laubenberg

SENATE VOTE: On final passage, April 25 — 30-0, on Local and Uncontested Calendar

WITNESSES: (*On House companion bill, HB 1137:*)
For — Chuck Hopson; (*Registered, but did not testify:* Paul Bollinger, HEB; Duane Galligher, Texas Independent Pharmacies Association; Leah Gonzalez, National Association of Social Workers Texas Chapter; Michael Harrold, Express Scripts; John Heal, Texas TrueCare Pharmacies; David Marwitz, Texas Pharmacy Association; Karen Reagan, Walgreen Company; Miguel Rodriguez, Texas Pharmacy Business Council; David Root, Prime Therapeutics; Brad Shields, Texas Federation of Drug Stores, Texas Society of Hospital Pharmacists; Gyl Switzer, Mental Health America of Texas; Morris Wilkes, United Supermarkets; Michael Wright, Texas Pharmacy Business Council)

Against — None

On — David Gonzales, Texas Association of Health Plans; (*Registered, but did not testify:* Andy Vasquez, Health and Human Services Commission)

BACKGROUND: Medicaid managed care organizations (MCOs) use pharmacy benefit managers (PBMs) to administer claims and reimbursements for participating pharmacies. PBMs reimburse pharmacies for certain prescription drugs according to a proprietary maximum allowable cost (MAC) formula.

DIGEST: SB 1106 would establish several conditions necessary for a PBM or

Medicaid MCO to place a drug on a MAC list.

The PBM or MCO would be required to use drugs rated as "A" or "B" in the most recent version of the U.S. Food and Drug Administration's *Approved Drug Products* (the "Orange Book"), or have a similar rating by a nationally recognized reference. The drug also would have to be generally available for pharmacies to purchase from national or regional wholesalers.

The bill would require the PBM or MCO to provide the sources used to determine the MAC pricing for the MAC list specific to that pharmacy at the time a contract with a network pharmacy was entered into or renewed.

The PBM or MCO would be required to review and update the MAC price information at least once every seven days. When formulating the MAC price for a drug, the PBM or MCO would use only the price of the drug and its therapeutic equivalents in the most recent edition of the Orange Book.

SB 1106 would require the PBM or MCO establish a process for eliminating products from the MAC list or modifying MAC prices in a timely manner to remain consistent with pricing changes and drug availability.

The bill would make the PBM or MCO provide a procedure for a network pharmacy to challenge a listed MAC price and respond to any challenge within 15 days. If the challenge was successful, the PBM or MCO would adjust the drug price and apply it to all similarly situated pharmacies. If it was unsuccessful, the PBM or MCO would provide the reason for the denial. The procedure would also require the PBM or MCO report to the Health and Human Services Commission (HHSC) every 90 days the number of challenges that were denied in that period for each MAC list drug for which a challenge was denied.

The PBM or MCO would be required to notify HHSC within 21 days of beginning to use a MAC list for drugs dispensed at retail but not by mail.

SB 1106 would require that the PBM or MCO provide a process for each of its network pharmacy providers to readily access the MAC list specific to that provider. The MAC list would otherwise remain confidential.

HHSC would be required to seek to amend contracts entered into before the bill's effective date, but in the case of a conflict between a provision in the bill and a contract with an MCO, the contract would prevail.

SB 1106 would take effect September 1, 2013, except for the requirement that that the PBM or MCO establish a process to access their MAC lists, which would take effect March 1, 2014.

SUPPORTERS SAY:

SB 1106 would provide transparency in the manner in which prescription drug prices are set in the Medicaid managed care system. Currently, neither HHSC nor pharmacies can determine which drugs will be reimbursed using a MAC formula, what the price will be, when it will change, or what sources are used to determine MAC prices.

Transparency in the way MAC prices are determined would establish PBM and MCO accountability by ensuring MAC prices were related to the wholesale market and not arbitrarily determined. This would provide pharmacies with much needed pricing certainty and predictability.

The bill would protect the Medicaid managed care program. By identifying the difference between the rate at which HHSC reimburses MCOs for prescription drugs and the rate at which PBMs reimburse pharmacies, the bill would give HHSC a mechanism to validate that the state was saving the maximum amount of money on prescription drugs. It also would prevent payments to pharmacies for Medicaid patients from dropping so low as to drive pharmacies out of the Medicaid managed care program, reducing patient access to medication.

Despite the indeterminate fiscal note, there is little risk that the bill would increase costs to the Medicaid program. Currently, MAC lists allow PBMs to capture a disproportionate amount of profit by underpricing certain prescription drugs. Allowing the free market to more accurately determine their costs would mean PBM profit margins also more accurately would reflect the free market, not that any price changes would be passed on to Medicaid as the payor.

OPPONENTS SAY:

SB 1106 would risk imposing significant fiscal costs on the state. If, contrary to HHSC's expectations, the bill caused an increase in the amounts MCOs were required to reimburse pharmacy providers under Medicaid managed care, those higher amounts would result in increases to the capitation rates paid to the MCOs, the costs ultimately would borne by

taxpayers.

For example, according to the Legislative Budget Board, estimated capitation payments in fiscal 2014 total $2.4 billion in all funds. Each 1 percent increase in capitation payments would increase all-funds expenditures by $24 million, including $10 million in general revenue.

SB 1106 would be an unnecessary governmental intrusion on business. PBMs are efficiently administering the Medicaid managed care program's pharmacy benefit plans and passing savings on to taxpayers. This bill would risk disrupting a system that is working.

NOTES:

According to the fiscal note, depending on changes to reimbursement rates, the cost implications of the bill would range from insignificant to a significantly negative impact on general revenue funds.

The House companion, HB 1137 by J. Davis, was left pending in the Public Health Committee following a public hearing on April 17.