

SUBJECT: Regulating the contractual relationship between pharmacists and PBMs

COMMITTEE: Insurance — committee substitute recommended

VOTE: 8 ayes — Lucio, Oliverson, S. Davis, Julie Johnson, Lambert, Paul, C.
Turner, Vo

0 nays

1 absent — G. Bonnen

WITNESSES: For — Duane Galligher, Texas Independent Pharmacies Association;
Steven Hoffart and Miguel Rodriguez, Texas Pharmacy Business Council;
John Hickman (*Registered, but did not testify*: Audra Conwell, Alliance of
Independent Pharmacists; Chase Bearden, Coalition of Texans with
Disabilities; John McCord, NFIB; Bradford Shields, Texas Federation of
Drug Stores, Texas Society of Health-System Pharmacists; Stephanie
Chiarello and Michael Muniz, Texas Pharmacy Association; Jerry Valdez
and Michael Wright, Texas Pharmacy Business Council; John Heal, Texas
TrueCare Pharmacies; Morris Wilkes, United Supermarkets; Omar
Fuentes; Lee Ann Hampton; Ryan Hoffart; Charles Weaver)

Against — Melodie Shrader, Pharmaceutical Care Management
Association; LuGina Mendez-Harper, Prime Therapeutics; Jamie
Dudensing, Texas Association of Health Plans

On — (*Registered, but did not testify*: Robin Vincent, Harris County
Human Resources and Risk Management; Jamie Walker and Amy Lee,
Texas Department of Insurance-Division of Workers' Compensation;
Ryan Van Ramshorst, Health and Human Services Commission)

BACKGROUND: Insurance Code ch. 1369 governs prescription drug benefits and other
services.

DIGEST: CSHB 2817 would regulate contracts between pharmacists and pharmacy
benefit managers (PBMs) by prohibiting certain claim reductions, unequal

reimbursements, and additional accreditation standards.

Applicability. The bill would apply to certain health benefit plans, including a small employer plan, consumer choice of benefits plan, and a health maintenance organization, among others as specified in the bill. The bill would not apply to a PBM under a workers compensation policy.

Claim reduction. The bill would prohibit a health plan issuer or PBM from reducing a claim payment to a pharmacist or pharmacy after adjudication of the claim except in accordance with an audit performed as described in statutory audit process. The bill would not prohibit a health benefit plan issuer or pharmacy benefit manager from increasing a claim payment amount after adjudication.

Drug delivery. Under CSHB 2817, a contract between a health plan issuer or PBM and a pharmacy or pharmacist could not prohibit the pharmacy or pharmacist from lawfully mailing a drug to a patient upon the patient's request or charging certain shipping and handling fees. A pharmacist or pharmacy would not be permitted to charge a health plan issuer or PBM for delivery of a prescription drug unless the charge was specifically agreed to by the plan issuer or PBM.

Accreditation standards. A contract could not require accreditation standards or recertification requirements other than what is required by law or manufacturers.

Reimbursement. A PBM could not provide larger reimbursements to affiliated pharmacies or pharmacists than those provided to unaffiliated pharmacists or pharmacies.

Network contract fee schedule. The bill would require a pharmacy benefit network contract to establish a separate fee schedule and provide a copy of that schedule to each contracted pharmacist and pharmacy. The fee schedule would need to describe:

- services or procedures that the pharmacist or pharmacy could

- deliver and the amount of the corresponding payment;
- a methodology for calculating payment based on a published fee schedule; or
 - any other reasonable manner that provided an ascertainable amount for payment for services.

Pharmacy services administrative organization contract. The bill would define "pharmacy services administrative organization" (PSAO) as an entity that contracted to conduct a pharmacist's or pharmacy's business with a third-party payor, including a pharmacy benefit manager, in connection with pharmacy benefits and to provide administrative services, including negotiating, executing, and administering a contract with a third-party payor.

A PSAO member that entered into a contract with a health benefit plan issuer would be entitled to receive a copy of the contract provisions applicable to the pharmacist or pharmacy.

Other provisions. A PBM would be prohibited from retaliating because a pharmacist or pharmacy exercised a right provided by this bill. Prohibited retaliation would include:

- terminating or refusing to renew a contract with the pharmacist or pharmacy;
- subjecting the pharmacist or pharmacy to increased audits; or
- failing to promptly pay the pharmacist or pharmacy any money owed by the PBM to the pharmacist or pharmacy.

The bill's provisions could not be waived, voided, or nullified by contract.

The bill would take effect September 1, 2019, and would apply to a contract entered into or renewed on or after the effective date.

SUPPORTERS
SAY:

CSHB 2817 would prohibit certain unfair contract provisions that are presented to independent pharmacists by PBMs as take-it-or-leave-it conditions for access to the market. Having fewer resources available to

independent pharmacists makes it difficult for them to compete with PBM-affiliated pharmacists and leaves them in a weaker negotiating position for contracts. PBMs currently apply retroactive fees against certain pharmacies and also may forbid their network pharmacies from providing mail-order or delivery services to patients. This bill would prohibit PBMs from assessing retroactive fees or payment reductions against a pharmacy based on performance standards, generic effective rate, or other factors, but would still allow PBMs to reduce payments retroactively as a legitimate audit outcome.

PBMs would remain free to negotiate positive, award-based incentives, although the bill would address certain contractual mechanisms that PBMs can abuse. Prohibiting PBMs from contractually requiring accreditations over and beyond state licensing or manufacturer-required trainings would expand the drugs independent pharmacists could provide without sacrificing patient safety.

**OPPONENTS
SAY:**

CSHB could interfere with private contract negotiation. The limitations on contractual provisions contained in this bill could prohibit arrangements that have been found to improve outcomes. Prohibiting PBMs from contractually requiring accreditations for specialty pharmacies also could create patient safety concerns.

NOTES:

According to the Legislative Budget Board, although there is no specific exemption for Medicaid or the Children's Health Insurance Program (CHIP), it is assumed the provisions would not apply. According to the Health and Human Services Commission, provisions of the bill would conflict with state law specific to Medicaid. If the provisions of the bill were applied to Medicaid or CHIP, there could be a significant cost associated with doing so.