

BILL ANALYSIS

Senate Research Center

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AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Prescription drug prices have been rising rapidly throughout the United States, including Texas. From 1992 through 2000, according to a report by Families USA, the average cost per prescription for senior citizens grew from \$28.50 to 42.30, an increase of over 48 percent. Based on this increase, the average amount that a senior citizen spent on prescription medication increased from \$669.75 to \$944.05 per year.

Texas has the ability to designate certain programs as State Pharmacy Assistance Programs (SPAPs). In an effort to decrease prescription drug prices for the most vulnerable populations, the federal government allows SPAPs to receive drugs at below market rates. Qualified programs are existing programs which provide state funding for drug costs. These would include county indigent health care programs, community mental health/mental retardation centers and community primary care services.

It is estimated that mental health/mental retardation centers could save between 26 and 40 percent of their drug costs if this program is implemented.

RULEMAKING AUTHORITY

(N.B.: Bill as drafted contains no chapter or section numbers.)

Rulemaking authority is expressly granted to an unspecified commission in SECTION 1 (Sections ___ and ___, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter ___, Government Code, by adding Subchapter ___, as follows:

SUBCHAPTER ___. DEVELOPMENT AND IMPLEMENTATION OF STATE PROGRAM.

- (a) Requires the commission develop and implement a state pharmacy assistance program (program) that operates as provided in this subchapter in providing drugs to eligible persons as defined in Subsection (b) and meets certain requirements.
- (b) Sets forth eligibility requirements for prescription drug benefits under the program.
- (c) Authorizes prescription drugs provided under this subchapter to be funded only with state general revenue funds or local funds.
- (d) Requires the commission to operate this program in a manner which provides for up front discounts for eligible persons.
- (e) Authorizes the commission, by contract, to authorize a private entity to negotiate with certain manufacturers and labelers on behalf of the commission.

Sec. ___. STATE PHARMACY PROGRAM: GENERAL PROVISIONS. (a) Requires the commission or its private contractor to implement certain provisions if the commission or its private contractor are unable to obtain voluntary discounts under this program.

Sec. _____. STATE PHARMACEUTICAL ASSISTANCE PROGRAM: GENERAL PROVISIONS. (a) Entitles an eligible person to obtain a prescription drug dispensed under this subchapter from an entity designated by the commission's rule or from a retail pharmacy that voluntarily participates in the program.

(b) Prohibits the price of a prescription drug under the program from exceeding a certain amount.

(c) Requires the commission to maintain an electronic database on a web site listing the names and addresses of all entities eligible to participate in the program established under this subchapter.

(d) Requires the commission or its contractor to engage in outreach activities to publicize the availability of discounted prescription drug prices under the program and to maximize enrollment in the program. Requires the commission to establish simplified procedures for enrolling program participants.

(e) Requires the commission or its private contractor to implement certain provisions if the commission or its private contractor are unable to obtain voluntary discounts under this program.

(f) Authorizes the commission to agree to pay a private contractor a percent of the gross purchases under the program. Requires any payment to be incorporated into the sales price.

Sec. _____. PARTICIPATING WHOLESALERS AND RETAIL PHARMACIES.

(a) Requires the commission or its contractor to contract with certain wholesalers.

(b) Sets forth certain requirements of a wholesaler in a contract between the commission or its contractor and a wholesaler.

(c) Requires the commission or its contractor to collect utilization information from each participating wholesaler as necessary to administer the program. Requires the commission or its contractor to protect the confidentiality of any information obtained under this subsection that is confidential under state or federal law, rule, or regulation.

(d) Requires the commission, by rule, to sets certain requirements of a participating retail pharmacy.

(e) Prohibits a participating pharmacy, including a retail pharmacy or wholesaler from reselling or otherwise transferring a prescription drug obtained under the program to certain entities.

(f) Provides that if the commission, after notice and opportunity for a hearing, determines that a participating pharmacy, retail pharmacy or wholesaler has acted in violation of Subsection (e), the pharmacy or wholesaler is liable to the manufacturer of the prescription drugs in an amount equal to the difference between the retail price of the drug at the time of the wrongful resale or transfer and the price at which the drug was obtained by the pharmacy or wholesaler under the program.

Sec. _____. CERTAIN REBATE DISPUTES OR DISCREPANCIES. (a) Requires a dispute or discrepancy in the amount of a discount negotiated under Section _____ to be resolved using the process established in this section.

(b) Authorizes the commission to hire an independent auditor acceptable to all affected parties to perform an audit at the commission's expense if there is a dispute or discrepancy in favor of a manufacturer or labeler relating to the amount of a discount for a prescription drug provided by the manufacturer or labeler.

Requires the manufacturer or labeler to take certain steps if the audit does not resolve the dispute or discrepancy

(c) Authorizes a manufacturer or labeler to hire an independent auditor acceptable to all affected parties to perform an audit at the expense of the manufacturer or labeler if there is a dispute or discrepancy in favor of the state relating to the amount of the discount for a prescription drug provided by the manufacturer or labeler. Requires the commission to take certain steps if the audit does not resolve the dispute or discrepancy.

(d) Authorizes any party not satisfied with the resolution of a dispute or discrepancy in accordance with Subsection (b) or (c) to request in writing a hearing before the State Office of Administrative Hearings. Requires the party to include supporting documentation with the request for a hearing.

Sec. _____. RULEMAKING. Authorizes the commission to adopt rules as necessary to administer this subchapter.

Sec. 531.408. ANNUAL REPORT. Requires the commission or its contractor to report to the legislature on the commission's activities under this subchapter not later than January 1 of each year. Requires the report to include the number of persons enrolled in the state pharmaceutical assistance program established under Section _____ and information regarding the financial condition of that program.

SECTION 3. Repealer: Subchapter B, Chapter 531, Sections (h)(3) and (l) [sic], Government Code.

SECTION 4. Authorizes delay of implementation of any provision of this Act until necessary federal waivers or authorizations are obtained.

SECTION 5. Effective date: upon passage or September 1, 2003 [sic].