

BILL ANALYSIS

Senate Research Center

C.S.S.B. 1581
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Health & Human Services
4/28/2005
Committee Report (Substituted)

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

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1 (Sections 531.504 and 531.507, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 531, Government Code, by adding Subchapter M, as follows:

SUBCHAPTER M. STATE PHARMACY ASSISTANCE PROGRAM

Sec. 531.501. STATE PHARMACY ASSISTANCE PROGRAM. (a) Requires the Health and Human Services Commission (HHSC) to develop and implement a state pharmacy assistance program (program) that provides prescription drug discounts to eligible persons and is a state pharmacy assistance program for certain purposes.

(b) Authorizes the program to be funded only with state general revenue funds or local funds. Provides that this subsection applies only to the provision of prescription drug discounts under this program, and does not affect the sources of funding permissible for other benefits provided to eligible persons under programs described by Section 531.503.

(c) Authorizes HHSC to contract with a private entity to negotiate with certain manufacturers and labelers on behalf of HHSC for discounted prescription drug acquisition prices.

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

Sec. 531.502. MAXIMUM PRICE. Prohibits the price of a prescription drug charged to an eligible person under the program from exceeding a certain price.

Sec. 531.503. ELIGIBILITY. (a) Provides that a person is eligible for prescription drug benefits under the program if the person meets certain requirements.

(b) Authorizes the executive commissioner of HHSC (executive commissioner) to expand eligibility for prescription drug benefits under the program to persons who are qualified to receive services under a program other than those listed in Subsection (a), provided that the other program meets certain standards.

Sec. 531.504. PARTICIPATING WHOLESALERS AND PHARMACIES. (a) Requires HHSC or its contractor to contract with certain wholesalers.

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

(c) Requires HHSC or its contractor to collect utilization information from each participating wholesaler as necessary to administer the program and 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 executive commissioner, by rule, to sets certain requirements of a participating pharmacy.

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

(f) Provides that if HHSC, after notice and opportunity for a hearing, determines that a participating 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 in violation of Subsection (e) and the price at which the drug was obtained by the pharmacy or wholesaler under the program.

Sec. 531.505. ACCESS TO PROGRAM BENEFITS. (a) Entitles an eligible person to obtain a prescription drug dispensed under this subchapter from an entity designated by the executive commissioner or from a pharmacy that voluntarily participates in the program.

(b) Requires HHSC to maintain an electronic database on a website listing the names and addresses of all pharmacies or other entities participating in the program.

(c) Requires HHSC 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 HHSC to establish simplified procedures for enrolling eligible persons.

Sec. 531.506. CERTAIN DISPUTES OR DISCREPANCIES. (a) Requires a dispute or discrepancy in the amount negotiated under Section 531.501 to be resolved using the process established by this section.

(b) Authorizes HHSC 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 party not satisfied with the resolution of a dispute or discrepancy under 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. 531.507 RULEMAKING. Authorizes the executive commissioner to adopt rules as necessary to administer this subchapter.

Sec. 531.508. ANNUAL REPORT. Requires HHSC to submit a report to the legislature on HHSC'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 pharmacy assistance program and information regarding the financial condition of that program.

Sec.531.509. IMPLEMENTATION OF PROGRAM. (a) Requires HHSC to fully implement this subchapter and make discounted drug prices available to eligible persons in accordance with the program described by this subchapter only if HHSC determines that adequate voluntary discounts negotiated under Section 531.501 are available.

(b) Authorizes HHSC to adopt preferred drug lists and impose prior authorization, as authorized by Sections 531.072 (Preferred Drug Lists) and 531.073 (Prior Authorization for Certain Drugs), for certain programs, if HHSC does not fully implement this subchapter.

SECTION 2. Amends Sections 531.070 (h) and (j), Government Code, to delete existing text referring to any other state program administer by HHSC or a health and human services agency, including community mental health centers and state mental health hospitals.

SECTION 3. Amends Section 531.072, Government Code, by adding Subsection (g), to authorize HHSC to adopt preferred drug lists under this section for a program that serves persons described by Section 531.503(a) only if HHSC cannot obtain adequate voluntary discounts under Subchapter M, Chapter 531, to permit full implementation of that subchapter, notwithstanding Subsection (a).

SECTION 4. Amends Section 531.073, Government Code, by adding Subsection (g), to authorize HHSC to require prior authorization under this section for a program that serves persons described by Section 531.503(a) only if HHSC cannot obtain adequate voluntary discounts under Subchapter M, Chapter 531, to permit full implementation of that subchapter, notwithstanding Subsection (a).

SECTION 5. Authorizes delay of implementation of any provision of this Act until any necessary federal waivers or authorizations are obtained.

SECTION 6. Effective date: upon passage or September 1, 2005.