

By: Raymond

H.B. No. 1545

A BILL TO BE ENTITLED

AN ACT

relating to a prescription drug purchasing program and an associated assistance program.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 531, Government Code, is amended by adding Subchapter K to read as follows:

SUBCHAPTER K. FAIR MARKET PRESCRIPTION DRUG PRICING AND PRESCRIPTION DRUG ASSISTANCE PROGRAM

Sec. 531.401. DEFINITIONS. In this subchapter:

(1) "Labeler" means a person that:

(A) has a labeler code from the Food and Drug Administration under 21 C.F.R. Section 207.20; and

(B) receives prescription drugs from a manufacturer or wholesaler and repackages those drugs for later retail sale.

(2) "Manufacturer" means a manufacturer of prescription drugs as defined by 42 U.S.C. Section 1396r-8(k)(5), including a subsidiary or affiliate of a manufacturer.

(3) "Publicly funded entity" means an entity funded wholly or partly with state or local government funds. The term includes a public hospital, a hospital district, a community mental health and mental retardation center, and a county providing indigent health care services under Chapter 61, Health and Safety Code.

1 (4) "Wholesaler" means a person licensed under
2 Subchapter I, Chapter 431, Health and Safety Code.

3 Sec. 531.402. NEGOTIATED PRESCRIPTION DRUG REBATES AND
4 DISCOUNT PRICES. (a) The commission shall negotiate with
5 manufacturers and labelers to obtain supplemental Medicaid rebates
6 or discount prices for prescription drugs sold in this state,
7 including prescription drugs sold to a publicly funded entity. In
8 negotiating terms for rebates, supplemental rebates, or discount
9 prices, the commission shall:

10 (1) attempt to obtain the lowest of the following
11 prices for each unit of a prescription drug:

12 (A) the price calculated each quarter under the
13 Medicaid rebate program in accordance with 42 U.S.C. Section
14 1396r-8;

15 (B) the price calculated each quarter under 42
16 U.S.C. Section 256b;

17 (C) the lowest price available each quarter to
18 any publicly funded entity; or

19 (D) any other price lower than the prices
20 specified by Paragraphs (A), (B), and (C) that the commission may
21 obtain through negotiation; and

22 (2) consider any available information on
23 prescription drug prices or discounts.

24 (b) A manufacturer or labeler may voluntarily negotiate
25 with the commission and enter into an agreement to provide:

26 (1) supplemental rebates for prescription drugs
27 provided under the Medicaid program in excess of the rebates

1 required by 42 U.S.C. Section 1396r-8;

2 (2) discount prices for prescription drugs provided
3 under the state pharmaceutical assistance program established
4 under Section 531.404; or

5 (3) discount prices for prescription drugs provided by
6 any other publicly funded entity.

7 (c) The commission may combine negotiations for the benefit
8 of the state pharmaceutical assistance program under Subsection
9 (b)(2) with any other state negotiations regarding prescription
10 drug prices as necessary to maximize the amount of rebates
11 available.

12 Sec. 531.403. PRIOR AUTHORIZATION REQUIREMENTS. (a) If
13 the commission and a manufacturer or labeler fail to reach an
14 agreement on supplemental Medicaid rebates and discount pricing for
15 the state pharmaceutical assistance program established under
16 Section 531.404 resulting in the availability of prescription drugs
17 at prices not more than the lowest price specified by Section
18 531.402(a)(1)(A), (B), or (C), the commission shall:

19 (1) place the products of the manufacturer or labeler
20 on the state's list of products requiring prior authorization under
21 the Medicaid program or any other state-funded program; and

22 (2) post the name of the manufacturer or labeler on the
23 commission's Internet site.

24 (b) Placement of products on a prior authorization list in
25 accordance with this section must be conducted in a manner that
26 complies with 42 U.S.C. Section 1396r-8(d)(5).

27 (c) The commission shall distribute to physicians,

1 pharmacists, and other health professionals in this state
2 information regarding the relative costs of prescription drugs
3 provided by manufacturers and labelers who have entered into
4 agreements with the commission under this subchapter and
5 prescription drugs provided by manufacturers and labelers who have
6 not entered into agreements with the commission under this
7 subchapter.

8 Sec. 531.404. STATE PHARMACEUTICAL ASSISTANCE PROGRAM:
9 GENERAL PROVISIONS. (a) The commission shall establish a state
10 pharmaceutical assistance program under 42 U.S.C. Section
11 1396r-8(c)(1)(C).

12 (b) The program shall promote the use of effective drugs by
13 providing for the availability of discounted prices to program
14 participants for each prescription drug available under the program
15 through an agreement under Section 531.402.

16 (c) A person is eligible to participate in the program if
17 the person is a resident of this state and:

18 (1) qualifies for the program under procedures
19 established by the commission;

20 (2) participates in any health program provided by a
21 publicly funded entity; and

22 (3) is not covered by an insurance policy or health
23 benefit plan, including a Medicare supplement policy or health
24 benefit plan, that provides benefits for prescription drugs.

25 (d) A program participant is entitled to obtain, from a
26 retail pharmacy that voluntarily participates in the program, a
27 prescription drug under the program at a price that does not exceed

1 the sum of:

2 (1) the pharmacy's discounted acquisition cost under
3 the program; and

4 (2) a dispensing fee in an amount equal to 105 percent
5 of the dispensing fee paid for providing the drug under the Medicaid
6 program.

7 (e) The commission shall engage in outreach activities to
8 publicize the availability of discounted prescription drug prices
9 under the program and to maximize enrollment in the program. The
10 commission shall establish simplified procedures for enrolling
11 program participants.

12 Sec. 531.405. PARTICIPATING WHOLESALERS AND RETAIL
13 PHARMACIES. (a) The commission shall contract with each
14 wholesaler that:

15 (1) elects to participate in the state pharmaceutical
16 assistance program established under Section 531.404; and

17 (2) satisfies the commission's participation
18 requirements.

19 (b) A contract between the commission and a wholesaler must
20 require the wholesaler to:

21 (1) provide prescription drugs available through the
22 program to participating retail pharmacies at a price not to exceed
23 the sum of:

24 (A) the wholesaler's discounted acquisition cost
25 under the program; and

26 (B) a reasonable delivery fee in an amount
27 negotiated by the wholesaler and the commission, which fee may vary

1 based on the monthly volume of prescription drugs provided by the
2 wholesaler and the number of required weekly deliveries;

3 (2) meet service levels specified in the contract;

4 (3) provide next-day delivery service on all orders
5 under the program by participating retail pharmacies;

6 (4) provide software and data interface capacity to
7 participating retail pharmacies as necessary to enable pharmacies
8 to comply with Subsection (d); and

9 (5) participate in the program on an ongoing basis for
10 the period specified in the contract.

11 (c) The commission shall collect utilization information
12 from each participating wholesaler as necessary to administer the
13 program. The commission shall protect the confidentiality of any
14 information obtained by the commission under this subsection that
15 is confidential under state or federal law, rule, or regulation.

16 (d) The commission by rule shall require a participating
17 retail pharmacy to:

18 (1) maintain a separate inventory of prescription
19 drugs obtained by the pharmacy under the program or segregate those
20 drugs from the pharmacy's other prescription drug stock; and

21 (2) maintain separate records of acquisition and
22 disposition of prescription drugs obtained by the pharmacy under
23 the program, and ensure that all computer records regarding those
24 drugs are readily available to the commission.

25 (e) A participating retail pharmacy or wholesaler may not
26 resell or otherwise transfer a prescription drug obtained under the
27 program to:

1 (1) a retail pharmacy that is not participating in the
2 program; or

3 (2) a consumer who is not a program participant.

4 (f) If the commission, after notice and opportunity for a
5 hearing, determines that a participating retail pharmacy or
6 wholesaler has acted in violation of Subsection (e), the pharmacy
7 or wholesaler is liable to the manufacturer of the prescription
8 drug in an amount equal to the difference between:

9 (1) the retail price of the drug at the time of the
10 wrongful resale or transfer; and

11 (2) the price at which the drug was obtained by the
12 pharmacy or wholesaler under the program.

13 Sec. 531.406. CERTAIN REBATE DISPUTES OR DISCREPANCIES.

14 (a) A dispute or discrepancy in the amount of a supplemental
15 Medicaid rebate negotiated under Section 531.402 must be resolved
16 using the process established in this section.

17 (b) The commission may hire an independent auditor
18 acceptable to all affected parties to perform an audit at the
19 commission's expense if there is a dispute or discrepancy in favor
20 of a manufacturer or labeler relating to the amount rebated for a
21 prescription drug provided by the manufacturer or labeler. If the
22 audit does not resolve the dispute or discrepancy, the manufacturer
23 or labeler shall:

24 (1) provide justification for the dispute or
25 discrepancy that is satisfactory to the commission; or

26 (2) pay the additional amount due.

27 (c) A manufacturer or labeler may hire an independent

1 auditor acceptable to all affected parties to perform an audit at
2 the expense of the manufacturer or labeler if there is a dispute or
3 discrepancy in favor of this state relating to the amount rebated
4 for a prescription drug provided by the manufacturer or labeler. If
5 the audit does not resolve the dispute or discrepancy, the
6 commission shall:

7 (1) provide justification for the dispute or
8 discrepancy that is satisfactory to the manufacturer or labeler; or

9 (2) refund to the manufacturer or labeler the amount
10 due.

11 (d) Any party not satisfied with the resolution of a dispute
12 or discrepancy in accordance with Subsection (b) or (c) may request
13 in writing a hearing before the State Office of Administrative
14 Hearings. The party must include supporting documentation with the
15 request for a hearing.

16 Sec. 531.407. RULEMAKING. The commission may adopt rules
17 as necessary to administer this subchapter.

18 Sec. 531.408. ANNUAL REPORT. Not later than January 1 of
19 each year, the commission shall report to the legislature on the
20 commission's activities under this subchapter. The report must
21 include the number of persons enrolled in the state pharmaceutical
22 assistance program established under Section 531.404 and
23 information regarding the financial condition of that program.

24 SECTION 2. If before implementing any provision of this Act
25 a state agency determines that a waiver or authorization from a
26 federal agency is necessary for implementation of that provision,
27 the agency affected by the provision shall request the waiver or

1 authorization and may delay implementing that provision until the
2 waiver or authorization is granted.

3 SECTION 3. (a) The Health and Human Services Commission
4 shall implement Sections 531.402 and 531.403, Government Code, as
5 added by this Act, not later than January 1, 2004.

6 (b) The Health and Human Services Commission shall
7 implement the state pharmaceutical assistance program required by
8 Sections 531.404 and 531.405 not later than January 1, 2005.

9 SECTION 4. This Act takes effect immediately if it receives
10 a vote of two-thirds of all the members elected to each house, as
11 provided by Section 39, Article III, Texas Constitution. If this
12 Act does not receive the vote necessary for immediate effect, this
13 Act takes effect September 1, 2003.