

BILL ANALYSIS

S.B. 1581
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Public Health
Committee Report (Unamended)

BACKGROUND AND PURPOSE

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

It is the committee's opinion that rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1 of this bill.

ANALYSIS

The bill 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 purposes of 42 U.S.C. Section 1396r-8(c) (1) (C). The bill authorizes the program to be funded only with state general revenue funds or local funds and 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 defined by this bill. The bill 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 and authorizes HHSC to agree to pay a private contractor a percentage of the gross purchases under the program as well as requiring that any payment to be incorporated into the sales price.

The bill prohibits the price of a prescription drug charged to an eligible person under the program from exceeding the sum of the discounted acquisition price under the program and a dispensing fee in an amount not to exceed 115 percent of the dispensing fee paid for providing the drug under the vendor drug program.

The bill provides that a person is eligible for prescription drug benefits under the program if the person is qualified to receive services under Chapter 31 or Subchapter B, Chapter 61, Health and Safety Code or is qualified to receive services from an established community mental health or mental retardation center. The bill 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 above, provided that the other program: is developed specifically for the target populations; is funded using state and not federal funds; provides payments directly to service providers; provides a pharmaceutical benefit alone or with other medical benefits or services; prohibits the benefits reimbursed under

the program to go to persons who are not beneficiaries of that program and does not violate any applicable nondiscrimination provisions under federal law.

The bill requires HHSC or its contractor to contract with each wholesaler that elects to participate in the program and satisfies the commission's participation requirements. The bill requires the contract between the HHSC or its contractor and a participating wholesaler to provide prescription drugs available through the program to pharmacies at certain price level, meet specified service levels in the contract, provide next-day delivery service, provide software and data interface capacity to participating pharmacies, and participate in the program for the time period specified in the contract. The bill requires the 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 and requires the executive commissioner, by rule, to require a participating pharmacy to separate prescription drugs obtained through the program and other drug stock, and maintain separate records of those prescription drugs obtained under the program. The bill prohibits a participating pharmacy or wholesaler from reselling or otherwise transferring a prescription drug obtained under the program to a nonparticipating pharmacy or a person who is not an eligible recipient. The bill provides that if HHSC, after notice and opportunity for a hearing, determines that a participating pharmacy or wholesaler has acted in violation of the transferring of prescription drugs, 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.

The bill 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 and 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. The bill also 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 and to establish simplified procedures for enrolling eligible persons.

The bill requires a dispute or discrepancy in the amount negotiated under the program to be resolved using the process established by this section. The bill 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. If the audit does not resolve the dispute or discrepancy, the manufacturer or labeler to provide justification for the dispute or discrepancy that is satisfactory to the commission or pay the additional amount due. The bill 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 and requires the commission to take certain steps if the audit does not resolve the dispute or discrepancy. The bill authorizes party not satisfied with the resolution of a dispute or discrepancy to request in writing a hearing before the State Office of Administrative Hearings and requires the party to include supporting documentation with the request for a hearing.

The bill authorizes the executive commissioner to adopt rules as necessary to administer this subchapter.

The bill requires HHSC to submit a report to the legislature on HHSC's activities under this subchapter not later than January 1 of each year and 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.

The bill 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 are available. The bill authorizes

HHSC to adopt preferred drug lists and impose prior authorization for certain programs, if HHSC does not fully implement this subchapter.

The bill deletes 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.

The bill authorizes HHSC to adopt preferred drug lists and 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.

The bill authorizes delay of implementation of any provision of this Act until any necessary federal waivers or authorizations are obtained.

EFFECTIVE DATE

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2005.