

By: Miller

H.B. No. 3391

A BILL TO BE ENTITLED

AN ACT

relating to prescription drugs under the Medicaid vendor drug program and other state health and human services programs.

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

SECTION 1. Section 531.070(1), Government Code, is amended to read as follows:

(1) Each year the commission shall provide a written report to the legislature and the governor. The report shall cover:

(1) the cost of administering the preferred drug lists adopted under Section 531.072;

(2) an analysis of the utilization trends for medical services provided by the state and any correlation to the preferred drug lists;

(3) an analysis of the effect on health outcomes and results for recipients; ~~and~~

(4) statistical information related to the number of approvals granted or denied; and

(5) an analysis of the effect during the preceding year of the implementation of the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (Pub. L. No. 108-173) on the preferred drug lists adopted under Section 531.072 and the prior authorization requirements under Section 531.073, including a determination of whether:

(A) any benefit remains from using the preferred

1 drug lists, given the eligibility of full-benefit dual eligible
2 individuals, as defined by 42 U.S.C. Section 1396u-5, for coverage
3 under a Medicare prescription drug plan; and

4 (B) any state contracts should be reconsidered,
5 given any reduction in the demand for prescription drugs under the
6 Medicaid vendor drug program that is caused by the shift of
7 full-benefit dual eligible individuals to the Medicare
8 prescription drug coverage.

9 SECTION 2. Section 531.071, Government Code, is amended by
10 adding Subsection (d) to read as follows:

11 (d) The commission or a health and human services agency may
12 not provide the Pharmaceutical and Therapeutics Committee with
13 access to any information that is confidential under Subsection
14 (a).

15 SECTION 3. Section 531.072, Government Code, is amended by
16 adding Subsections (g) and (h) to read as follows:

17 (g) Notwithstanding Section 2001.223, a decision by the
18 commission denying placement of a drug on a preferred drug list
19 adopted under this section is a decision in a contested case as
20 defined by Chapter 2001 and is subject to judicial review under the
21 substantial evidence rule in accordance with that chapter.

22 (h) The commission may not issue a physician or patient
23 advisory or directive discouraging the use of any drug on a
24 preferred drug list adopted under this section to treat a medical
25 condition for which the drug is indicated.

26 SECTION 4. Section 531.073, Government Code, is amended by
27 adding Subsections (b-1), (b-2), and (g) to read as follows:

1 (b-1) The commission shall develop criteria for use in
2 determining whether to grant prior authorization for a drug or
3 class of drugs. The Department of State Health Services' drug
4 utilization review board shall review and advise the commission
5 regarding the criteria. The commission may adopt and implement the
6 criteria only after the board has reviewed and advised the
7 commission regarding the criteria. A meeting of the drug
8 utilization review board at which the board will review proposed
9 criteria is subject to Chapter 551.

10 (b-2) The commission shall post on the Internet for
11 consumers and providers the criteria the commission will use for
12 each drug or class of drugs in determining whether to grant prior
13 authorization.

14 (g) If a prescribing physician or practitioner indicates
15 "dispense as written" in handwriting on the face of a prescription
16 or, for an electronic prescription, in an appropriate format, the
17 dispensing pharmacy may not substitute another drug without the
18 express permission of the prescribing physician or practitioner.
19 Notwithstanding any other law, the Medicaid vendor drug program,
20 the child health plan program, or another state program
21 administered by the commission or a health and human services
22 agency, as applicable:

23 (1) shall reimburse a dispensing pharmacy for a drug
24 dispensed for a recipient under the applicable program in
25 accordance with a "dispense as written" order; and

26 (2) may not require the dispensing pharmacy to obtain:

27 (A) prior authorization from the applicable

1 program or any program administrator; or

2 (B) confirmation from the prescribing physician
3 or practitioner by telephone or another means that the physician or
4 practitioner does not wish to substitute another medication for the
5 prescribed medication.

6 SECTION 5. Sections 531.074(c), (h), and (i), Government
7 Code, are amended to read as follows:

8 (c) In making appointments to the committee under
9 Subsection (b), the governor shall ensure that the committee
10 includes physicians and pharmacists who:

11 (1) represent different specialties and provide
12 services to all segments of the Medicaid program's diverse
13 population;

14 (2) have experience in either developing or practicing
15 under a preferred drug list; ~~and~~

16 (3) do not have contractual relationships, ownership
17 interests, or other conflicts of interest with a pharmaceutical
18 manufacturer or labeler or with an entity engaged by the commission
19 to assist in the development of the preferred drug lists or the
20 administration of the prior authorization system; and

21 (4) participate in a medical or pharmaceutical
22 practice that involves caring for, or supervising the care of, at
23 least 150 Medicaid recipients.

24 (h) In developing its recommendations for the preferred
25 drug lists, the committee shall:

26 (1) consider the clinical efficacy, safety, and
27 cost-effectiveness and any program benefit associated with a

1 product; and

2 (2) for each class of drugs considered, solicit from
3 the Texas Medical Association written and verbal testimony from one
4 or more physicians specializing in the treatment of the diseases or
5 conditions the class of drugs is used to treat.

6 (i) The committee is subject to Chapter 551. The commission
7 shall adopt rules otherwise governing the operation of the
8 committee [~~, including rules governing the procedures used by the~~
9 ~~committee for providing notice of a meeting and rules prohibiting~~
10 ~~the committee from discussing confidential information described~~
11 ~~by Section 531.071 in a public meeting]~~. The committee shall comply
12 with the rules adopted under this subsection.

13 SECTION 6. As soon as possible after the effective date of
14 this Act, the Health and Human Services Commission shall submit to
15 the Department of State Health Services' drug utilization review
16 board any criteria used by the commission on the effective date of
17 this Act in determining whether to grant prior authorization for a
18 drug or class of drugs under Section 531.073, Government Code. Not
19 later than November 1, 2005, the drug utilization review board
20 shall review and advise the commission regarding the criteria. The
21 commission shall revise the criteria as necessary after considering
22 the board's recommendations.

23 SECTION 7. If before implementing any provision of this Act
24 a state agency determines that a waiver or authorization from a
25 federal agency is necessary for implementation of that provision,
26 the agency affected by the provision shall request the waiver or
27 authorization and may delay implementing that provision until the

1 waiver or authorization is granted.

2 SECTION 8. This Act takes effect immediately if it receives
3 a vote of two-thirds of all the members elected to each house, as
4 provided by Section 39, Article III, Texas Constitution. If this
5 Act does not receive the vote necessary for immediate effect, this
6 Act takes effect September 1, 2005.