

By: Zaffirini

S.B. No. 1581

A BILL TO BE ENTITLED

AN ACT

relating to the creation of a state pharmacy assistance program based on up-front discounts and to supplemental rebates obtained for prescription drugs provided under certain other state programs.

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

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

SUBCHAPTER M. STATE PHARMACY ASSISTANCE PROGRAM

Sec. 531.501. STATE PHARMACY ASSISTANCE PROGRAM. (a) The commission shall develop and implement a state pharmacy assistance 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).

(b) The state pharmacy assistance program may only be funded with state general revenue funds or local funds. This subsection applies only to the provision of prescription drug discounts under the state pharmacy assistance 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) The commission may contract with a private entity to negotiate on behalf of the commission for discounted prescription drug acquisition prices with manufacturers and labelers, as those terms are defined by Section 531.070.

(d) The commission may agree to pay a private contractor a

1 percentage of the gross purchases under the program. Any such
2 payment shall be incorporated into the sales price.

3 Sec. 531.502. MAXIMUM PRICE. The price of a prescription
4 drug charged to an eligible person under the state pharmacy
5 assistance program may not exceed the sum of:

6 (1) the discounted acquisition price under the
7 program; and

8 (2) a dispensing fee in an amount not to exceed 115
9 percent of the dispensing fee paid for providing the drug under the
10 vendor drug program.

11 Sec. 531.503. ELIGIBILITY. (a) A person is eligible for
12 prescription drug benefits under the state pharmacy assistance
13 program if the person is:

14 (1) qualified to receive services under Chapter 31 or
15 Subchapter B, Chapter 61, Health and Safety Code; or

16 (2) qualified to receive services from a community
17 mental health or mental retardation center established under
18 Subchapter A, Chapter 534, Health and Safety Code.

19 (b) The commissioner may expand eligibility for
20 prescription drug benefits under the state pharmacy assistance
21 program to persons who are qualified to receive services under a
22 program other than those listed in Subsection (a) provided that the
23 other program:

24 (1) is developed by the state specifically for the
25 benefit of disabled, indigent, low-income, elderly, or other
26 financially vulnerable persons;

27 (2) is funded using state funds and not federal funds;

1 (3) provides payments directly to service providers;

2 (4) provides only a pharmaceutical benefit or a
3 pharmaceutical benefit in conjunction with other medical benefits
4 or services;

5 (5) prohibits the diversion, resale, or transfer of
6 benefits reimbursed under the state pharmacy assistance program to
7 persons who are not beneficiaries of that program; and

8 (6) does not violate any applicable nondiscrimination
9 provisions under federal law.

10 Sec. 531.504. PARTICIPATING WHOLESALERS AND PHARMACIES.

11 (a) The commission or its contractor shall contract with each
12 wholesaler that:

13 (1) elects to participate in the state pharmacy
14 assistance program; and

15 (2) satisfies the commission's participation
16 requirements.

17 (b) A contract between the commission or its contractor and
18 a participating wholesaler must require the wholesaler to:

19 (1) provide prescription drugs available through the
20 program to pharmacies that voluntarily elect to participate in the
21 program at a price not to exceed the sum of:

22 (A) the discounted acquisition cost under the
23 program;

24 (B) a reasonable delivery fee in an amount
25 negotiated by the wholesaler and the commission or its contractor,
26 which fee may vary based on the monthly volume of prescription drugs
27 provided by the wholesaler and the number of required weekly

1 deliveries; and

2 (C) a reasonable percentage of the gross
3 purchases approved by the commission as provided by Section
4 531.501(d);

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

6 (3) provide next-day delivery service on all orders
7 under the program to participating pharmacies;

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

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

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

19 (d) The executive commissioner by rule shall require a
20 participating pharmacy to:

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

24 (2) maintain separate records of acquisition and
25 disposition of prescription drugs obtained by the pharmacy under
26 the program and ensure that all computer records regarding those
27 drugs are readily available on the request of the commission or its

1 contractor.

2 (e) A participating pharmacy or wholesaler may not resell or
3 otherwise transfer a prescription drug obtained under the program
4 to:

5 (1) a pharmacy that is not participating in the
6 program; or

7 (2) a person who is not an eligible program
8 participant.

9 (f) If the commission, after notice and opportunity for a
10 hearing, determines that a participating pharmacy or wholesaler
11 violated Subsection (e), the pharmacy or wholesaler is liable to
12 the manufacturer of the prescription drugs for an amount equal to
13 the difference between:

14 (1) the retail price of the drug at the time of the
15 resale or transfer in violation of Subsection (e); and

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

18 Sec. 531.505. ACCESS TO PROGRAM BENEFITS. (a) An eligible
19 person is entitled to obtain a prescription drug dispensed under
20 this subchapter from an entity designated by the executive
21 commissioner or from a pharmacy that voluntarily participates in
22 the state pharmacy assistance program.

23 (b) The commission shall maintain an electronic database on
24 a website listing the names and addresses of all pharmacies or other
25 entities participating in the program.

26 (c) The commission or its contractor shall engage in
27 outreach activities to publicize the availability of discounted

1 prescription drug prices under the program and to maximize
2 enrollment in the program. The commission shall establish
3 simplified procedures for enrolling eligible persons.

4 Sec. 531.506. CERTAIN DISPUTES OR DISCREPANCIES. (a) A
5 dispute or discrepancy in the amount negotiated under Section
6 531.501 must be resolved using the process established by this
7 section.

8 (b) The commission may hire an independent auditor
9 acceptable to all affected parties to perform an audit at the
10 commission's expense if there is a dispute or discrepancy in favor
11 of a manufacturer or labeler relating to the amount of a discount
12 for a prescription drug provided by the manufacturer or labeler. If
13 the audit does not resolve the dispute or discrepancy, the
14 manufacturer or labeler shall:

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

17 (2) pay the additional amount due.

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

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

27 (2) require participating entities to refund to the

1 manufacturer or labeler the amount due.

2 (d) A party that is not satisfied with the resolution of a
3 dispute or discrepancy under Subsection (b) or (c) may request in
4 writing a hearing before the State Office of Administrative
5 Hearings. The party must include supporting documentation with the
6 request for a hearing.

7 Sec. 531.507. RULEMAKING. The executive commissioner may
8 adopt rules as necessary to administer this subchapter.

9 Sec. 531.508. ANNUAL REPORT. Not later than January 1 of
10 each year, the commission shall submit a report to the legislature
11 on the commission's activities under this subchapter. The report
12 must include the number of persons enrolled in the state pharmacy
13 assistance program and information regarding the financial
14 condition of the program.

15 Sec. 531.509. IMPLEMENTATION OF PROGRAM. (a) The
16 commission shall fully implement this subchapter and make
17 discounted drug prices available to eligible persons in accordance
18 with the state pharmacy assistance program described by this
19 subchapter only if the commission determines that adequate
20 voluntary discounts negotiated under Section 531.501 are
21 available.

22 (b) If the commission does not fully implement this
23 subchapter, the commission may adopt preferred drug lists and
24 impose prior authorization requirements, as authorized by Sections
25 531.072 and 531.073, for programs that provide prescription drugs
26 to persons described by Section 531.503(a).

27 SECTION 2. Subsections (h) and (j), Section 531.070,

Government Code, are amended to read as follows:

(h) Subject to Subsection (i), the commission shall negotiate with manufacturers and labelers, including generic manufacturers and labelers, to obtain supplemental rebates for prescription drugs provided under:

(1) the Medicaid vendor drug program in excess of the Medicaid rebates required by 42 U.S.C. Section 1396r-8 and its subsequent amendments; and

(2) the child health plan program~~[, and~~
~~[(3) any other state program administered by the commission or a health and human services agency, including community mental health centers and state mental health hospitals].~~

(j) A manufacturer or labeler that sells prescription drugs in this state may voluntarily negotiate with the commission and enter into an agreement to provide supplemental rebates for prescription drugs provided under:

(1) the Medicaid vendor drug program in excess of the Medicaid rebates required by 42 U.S.C. Section 1396r-8 and its subsequent amendments; and

(2) the child health plan program~~[, and~~
~~[(3) any other state program administered by the commission or a health and human services agency, including community mental health centers and state mental health hospitals].~~

SECTION 3. Section 531.072, Government Code, is amended by adding Subsection (g) to read as follows:

(g) Notwithstanding Subsection (a), the commission may adopt preferred drug lists under this section for a program that

1 serves persons described by Section 531.503(a) only if the
2 commission cannot obtain adequate voluntary discounts under
3 Subchapter M, Chapter 531, to permit full implementation of that
4 subchapter.

5 SECTION 4. Section 531.073, Government Code, is amended by
6 adding Subsection (g) to read as follows:

7 (g) Notwithstanding Subsection (a), the commission may
8 require prior authorization under this section for a program that
9 serves persons described by Section 531.503(a) only if the
10 commission cannot obtain adequate voluntary discounts under
11 Subchapter M, Chapter 531, to permit full implementation of that
12 subchapter.

13 SECTION 5. If before implementing any provision of this Act
14 a state agency determines that a waiver or authorization from a
15 federal agency is necessary for implementation of that provision,
16 the agency affected by the provision shall request the waiver or
17 authorization and may delay implementing that provision until the
18 waiver or authorization is granted.

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