

By: Zaffirini

S.B. No. 1581

A BILL TO BE ENTITLED

AN ACT

relating to the creation of a state pharmacy assistance program for certain beneficiaries of state and local funded programs.

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

SECTION 1. Chapter ____, Government Code, is amended by adding Subchapter ____ as follows:

SUBCHAPTER _____. DEVELOPMENT AND IMPLEMENTATION OF STATE PROGRAM. (a) The Commission shall develop and implement a state pharmacy assistance program that operates as provided in this Subchapter in providing drugs to eligible persons as defined in Subsection (b) and meets the requirements of 42 U.S.C. Section 1396-8(c)(1)(C).

(b) A person is eligible for prescription drug benefits under the state program if the person is:

(1) qualified to receive services under Title 7, Subtitle A, Chapter 531, Health and Safety Code;

(2) qualified to receive services under Subtitle C, Chapter 61, Subchapter A and B, Health and Safety Code; or

(3) qualified to receive services under Subtitle B, Chapter 31, Health and Safety Code;

(c) Prescription drugs provided under this Subchapter may be funded only with state general revenue funds or local funds.

(d) The Commission shall operate this program in a manner which provides for up front discounts for eligible persons.

1 (e) The Commission may by contract authorize a private
2 entity to negotiate with manufacturers and labelers, as those terms
3 are defined in Subchapter B, Chapter 531, Sections 531.070(1) and
4 (2), on behalf of the Commission.

5 Sec. _____. STATE PHARMACY PROGRAM: GENERAL PROVISIONS.

6 (a) The Commission or its private contractor shall implement the
7 provisions of Subchapter B, Chapter 531, Government Code Sections
8 531.072 and 531.073 if the Commission or its private contractor are
9 unable to obtain voluntary discounts under this program.

10 Sec. _____. STATE PHARMACEUTICAL ASSISTANCE PROGRAM: GENERAL
11 PROVISIONS. (a) An eligible person is entitled to obtain a
12 prescription drug dispensed under this Subchapter from an entity
13 designated by the Commission's rule or from a retail pharmacy that
14 voluntarily participates in the program.

15 (b) The price of a prescription drug under the program shall
16 not exceed the sum of:

17 (1) the discounted acquisition price under the
18 program; and

19 (2) a dispensing fee in an amount equal to 115 percent
20 of the dispensing fee paid for providing the drug under the Vendor
21 Drug program.

22 (c) The Commission shall maintain an electronic database on
23 a web site listing the names and addresses of all entities eligible
24 to participate in the program established under this Subchapter.

25 (d) The Commission or its contractor shall engage in
26 outreach activities to publicize the availability of discounted
27 prescription drug prices under the program and to maximize

1 enrollment in the program. The Commission shall establish
2 simplified procedures for enrolling program participants.

3 (e) The Commission or its private contractor shall
4 implement the provisions of Subchapter B, Chapter 531, Government
5 Code Sections 531.072 and 531.073 if the Commission or its private
6 contractor are unable to obtain voluntary discounts under this
7 program.

8 (f) The Commission may agree to pay a private contractor a
9 percent of the gross purchases under the program. Any payment shall
10 be incorporated into the sales price.

11 Sec. _____. PARTICIPATING WHOLESALERS AND RETAIL PHARMACIES.

12 (a) The Commission or its contractor shall contract with each
13 wholesaler that:

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

16 (2) satisfies the Commission's participation
17 requirements.

18 (b) A contract between the Commission or its contractor and
19 a wholesaler must require the wholesaler to:

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

23 (A) the discounted acquisition cost under the
24 program; and

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

1 provided by the wholesaler and the number of required weekly
2 deliveries; and

3 (C) a reasonable percent of the gross purchases
4 approved by the Commission.

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 including retail
8 pharmacies;

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

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

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

20 (d) The Commission, by rule, shall require a participating
21 retail pharmacy to:

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

25 (2) maintain separate records of acquisition and
26 disposition of prescription drugs obtained by the pharmacy under
27 the program, and ensure that all computer records regarding those

1 drugs are readily available per request to the Commission or its
2 contractor.

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

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

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

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

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

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

18 Sec. _____. CERTAIN REBATE DISPUTES OR DISCREPANCIES.

19 (a) A dispute or discrepancy in the amount of a discount
20 negotiated under Section _____ must be resolved using the process
21 established in this section.

22 (b) The Commission may hire an independent auditor
23 acceptable to all affected parties to perform an audit at the
24 Commission's expense if there is a dispute or discrepancy in favor
25 of a manufacturer or labeler relating to the amount of a discount
26 for a prescription drug provided by the manufacturer or labeler. If
27 the audit does not resolve the dispute or discrepancy, the

1 manufacturer or labeler shall:

2 (1) provide justification for the dispute or
3 discrepancy that is satisfactory to the Commission; or

4 (2) pay the additional amount due.

5 (c) A manufacturer or labeler may hire an independent
6 auditor acceptable to all affected parties to perform an audit at
7 the expense of the manufacturer or labeler if there is a dispute or
8 discrepancy in favor of the state relating to the amount of the
9 discount for a prescription drug provided by the manufacturer or
10 labeler. If the audit does not resolve the dispute or discrepancy,
11 the Commission shall:

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

14 (2) cause refund to the manufacturer or labeler to be
15 issued by participating entities in the amount due.

16 (d) Any party not satisfied with the resolution of a dispute
17 or discrepancy in accordance with Subsection (b) or (c) may request
18 in writing a hearing before the State Office of Administrative
19 Hearings. The party must include supporting documentation with the
20 request for a hearing.

21 Sec. _____. RULEMAKING. The Commission may adopt rules as
22 necessary to administer this Subchapter.

23 Sec. 531.408. ANNUAL REPORT. Not later than January 1 of
24 each year, the Commission or its contractor shall report to the
25 legislature on the Commission's activities under this Subchapter.
26 The report must include the number of persons enrolled in the state
27 pharmaceutical assistance program established under Section ____

1 and information regarding the financial condition of that program.

2 SECTION 3. Subchapter B, Chapter 531, Sections (h)(3) and
3 (1), Government Code are hereby repealed.

4 SECTION 4. If before implementing any provision of this
5 Subchapter the Commission determines that a designation or
6 authorization from a federal agency is necessary for implementation
7 of this Subchapter, the Commission shall request the designation or
8 authorization and may delay implementing that provision until the
9 designation or authorization is granted.

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