

1-1 By: Zaffirini S.B. No. 1581
1-2 (In the Senate - Filed March 11, 2005; March 22, 2005, read
1-3 first time and referred to Committee on Health and Human Services;
1-4 April 28, 2005, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 8, Nays 0; April 28, 2005,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1581 By: Zaffirini

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the creation of a state pharmacy assistance program
1-11 based on up-front discounts and to supplemental rebates obtained
1-12 for prescription drugs provided under certain other state programs.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Chapter 531, Government Code, is amended by
1-15 adding Subchapter M to read as follows:

1-16 SUBCHAPTER M. STATE PHARMACY ASSISTANCE PROGRAM

1-17 Sec. 531.501. STATE PHARMACY ASSISTANCE PROGRAM. (a) The
1-18 commission shall develop and implement a state pharmacy assistance
1-19 program that provides prescription drug discounts to eligible
1-20 persons and is a state pharmacy assistance program for purposes of
1-21 42 U.S.C. Section 1396r-8(c)(1)(C).

1-22 (b) The state pharmacy assistance program may only be funded
1-23 with state general revenue funds or local funds. This subsection
1-24 applies only to the provision of prescription drug discounts under
1-25 the state pharmacy assistance program and does not affect the
1-26 sources of funding permissible for other benefits provided to
1-27 eligible persons under programs described by Section 531.503.

1-28 (c) The commission may contract with a private entity to
1-29 negotiate on behalf of the commission for discounted prescription
1-30 drug acquisition prices with manufacturers and labelers, as those
1-31 terms are defined by Section 531.070.

1-32 (d) The commission may agree to pay a private contractor a
1-33 percentage of the gross purchases under the program. Any such
1-34 payment shall be incorporated into the sales price.

1-35 Sec. 531.502. MAXIMUM PRICE. The price of a prescription
1-36 drug charged to an eligible person under the state pharmacy
1-37 assistance program may not exceed the sum of:

1-38 (1) the discounted acquisition price under the
1-39 program; and

1-40 (2) a dispensing fee in an amount not to exceed 115
1-41 percent of the dispensing fee paid for providing the drug under the
1-42 vendor drug program.

1-43 Sec. 531.503. ELIGIBILITY. (a) A person is eligible for
1-44 prescription drug benefits under the state pharmacy assistance
1-45 program if the person is:

1-46 (1) qualified to receive services under Chapter 31 or
1-47 Subchapter B, Chapter 61, Health and Safety Code; or

1-48 (2) qualified to receive services from a community
1-49 mental health or mental retardation center established under
1-50 Subchapter A, Chapter 534, Health and Safety Code.

1-51 (b) The commissioner may expand eligibility for
1-52 prescription drug benefits under the state pharmacy assistance
1-53 program to persons who are qualified to receive services under a
1-54 program other than those listed in Subsection (a) provided that the
1-55 other program:

1-56 (1) is developed by the state specifically for the
1-57 benefit of disabled, indigent, low-income, elderly, or other
1-58 financially vulnerable persons;

1-59 (2) is funded using state funds and not federal funds;

1-60 (3) provides payments directly to service providers;

1-61 (4) provides only a pharmaceutical benefit or a
1-62 pharmaceutical benefit in conjunction with other medical benefits
1-63 or services;

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

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

Sec. 531.504. PARTICIPATING WHOLESALERS AND PHARMACIES. (a) The commission or its contractor shall contract with each wholesaler that:

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

(2) satisfies the commission's participation requirements.

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

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

(A) the discounted acquisition cost under the program;

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

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

(2) meet service levels specified in the contract;

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 531.505. ACCESS TO PROGRAM BENEFITS. (a) An eligible person is entitled to obtain a prescription drug dispensed under

3-1 this subchapter from an entity designated by the executive
3-2 commissioner or from a pharmacy that voluntarily participates in
3-3 the state pharmacy assistance program.

3-4 (b) The commission shall maintain an electronic database on
3-5 a website listing the names and addresses of all pharmacies or other
3-6 entities participating in the program.

3-7 (c) The commission or its contractor shall engage in
3-8 outreach activities to publicize the availability of discounted
3-9 prescription drug prices under the program and to maximize
3-10 enrollment in the program. The commission shall establish
3-11 simplified procedures for enrolling eligible persons.

3-12 Sec. 531.506. CERTAIN DISPUTES OR DISCREPANCIES. (a) A
3-13 dispute or discrepancy in the amount negotiated under Section
3-14 531.501 must be resolved using the process established by this
3-15 section.

3-16 (b) The commission may hire an independent auditor
3-17 acceptable to all affected parties to perform an audit at the
3-18 commission's expense if there is a dispute or discrepancy in favor
3-19 of a manufacturer or labeler relating to the amount of a discount
3-20 for a prescription drug provided by the manufacturer or labeler. If
3-21 the audit does not resolve the dispute or discrepancy, the
3-22 manufacturer or labeler shall:

3-23 (1) provide justification for the dispute or
3-24 discrepancy that is satisfactory to the commission; or

3-25 (2) pay the additional amount due.

3-26 (c) A manufacturer or labeler may hire an independent
3-27 auditor acceptable to all affected parties to perform an audit at
3-28 the expense of the manufacturer or labeler if there is a dispute or
3-29 discrepancy in favor of the state relating to the amount of the
3-30 discount for a prescription drug provided by the manufacturer or
3-31 labeler. If the audit does not resolve the dispute or discrepancy,
3-32 the commission shall:

3-33 (1) provide justification for the dispute or
3-34 discrepancy that is satisfactory to the manufacturer or labeler; or

3-35 (2) require participating entities to refund to the
3-36 manufacturer or labeler the amount due.

3-37 (d) A party that is not satisfied with the resolution of a
3-38 dispute or discrepancy under Subsection (b) or (c) may request in
3-39 writing a hearing before the State Office of Administrative
3-40 Hearings. The party must include supporting documentation with the
3-41 request for a hearing.

3-42 Sec. 531.507. RULEMAKING. The executive commissioner may
3-43 adopt rules as necessary to administer this subchapter.

3-44 Sec. 531.508. ANNUAL REPORT. Not later than January 1 of
3-45 each year, the commission shall submit a report to the legislature
3-46 on the commission's activities under this subchapter. The report
3-47 must include the number of persons enrolled in the state pharmacy
3-48 assistance program and information regarding the financial
3-49 condition of the program.

3-50 Sec. 531.509. IMPLEMENTATION OF PROGRAM. (a) The
3-51 commission shall fully implement this subchapter and make
3-52 discounted drug prices available to eligible persons in accordance
3-53 with the state pharmacy assistance program described by this
3-54 subchapter only if the commission determines that adequate
3-55 voluntary discounts negotiated under Section 531.501 are
3-56 available.

3-57 (b) If the commission does not fully implement this
3-58 subchapter, the commission may adopt preferred drug lists and
3-59 impose prior authorization requirements, as authorized by Sections
3-60 531.072 and 531.073, for programs that provide prescription drugs
3-61 to persons described by Section 531.503(a).

3-62 SECTION 2. Subsections (h) and (j), Section 531.070,
3-63 Government Code, are amended to read as follows:

3-64 (h) Subject to Subsection (i), the commission shall
3-65 negotiate with manufacturers and labelers, including generic
3-66 manufacturers and labelers, to obtain supplemental rebates for
3-67 prescription drugs provided under:

3-68 (1) the Medicaid vendor drug program in excess of the
3-69 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 serves persons described by Section 531.503(a) only if the commission cannot obtain adequate voluntary discounts under Subchapter M, Chapter 531, to permit full implementation of that subchapter.

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

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

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

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

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