

**LEGISLATIVE BUDGET BOARD**  
Austin, Texas

**FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION**

**March 1, 2005**

**TO:** Honorable Dianne White Delisi, Chair, House Committee on Public Health

**FROM:** John S. O'Brien, Deputy Director, Legislative Budget Board

**IN RE: HB1336** by Isett (Relating to the regulation of pharmacy benefit managers; providing administrative and criminal penalties.), **As Introduced**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB1336, As Introduced: an impact of \$0 through the biennium ending August 31, 2007.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**General Revenue-Related Funds, Five-Year Impact:**

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2006	\$0
2007	\$0
2008	\$0
2009	\$0
2010	\$0

**All Funds, Five-Year Impact:**

Fiscal Year	Probable Savings/ (Cost) from <i>PHARMACY BD OPERATING ACC</i> 523	Probable Revenue Gain/(Loss) from <i>PHARMACY BD OPERATING ACC</i> 523	Probable Savings/ (Cost) from <i>INSURANCE MAINT TAX FEES</i> 8042	Probable Revenue Gain/(Loss) from <i>INSURANCE MAINT TAX FEES</i> 8042
2006	(\$68,214)	\$68,214	(\$257,707)	\$257,707
2007	(\$41,244)	\$41,244	(\$229,843)	\$229,843
2008	(\$41,244)	\$41,244	(\$229,843)	\$229,843
2009	(\$41,244)	\$41,244	(\$114,921)	\$114,921
2010	(\$41,244)	\$41,244	(\$114,921)	\$114,921

Fiscal Year	Change in Number of State Employees from FY 2005
2006	5.0
2007	5.0
2008	5.0
2009	3.0
2010	3.0

## **Fiscal Analysis**

The bill would amend the Insurance and Occupations Codes by adding new chapters to each code. It would modify Section 4151.001(l) of the Insurance Code and repeal Subchapter D and Chapter 4151 of the Insurance Code, all relating to the regulation of pharmacy benefit managers (PBM). The bill would require PBMs to be covered by a certificate of authority (COA) issued by the Commissioner of the Texas Department of Insurance (TDI) and a PBM license issued by the Board of Pharmacy (board).

The bill would establish an application fee of \$300 for each COA and would be valid for two years. The bill would allow the Commissioner of Insurance to examine a PBM and would require the commissioner to establish a fee, not to exceed \$500, to cover examination costs. The PBM would file, no later than March 1st of each year, an annual statement accompanied by a \$1,000 filing fee. The bill would require the Commissioner of Insurance to annually assess each PBM holding a COA to cover associated expenses incurred by the TDI.

The bill would establish a non-refundable application fee of \$500 for a PBM license issued by the board and the bill would allow the board to discipline licensees by issuing cease and desist orders or suspending or revoking licenses.

The bill would remove PBMs from the definition of "third party administrator" in Section 4151.001 of the Insurance Code. According to the Comptroller of Public Accounts, because PBMs would no longer fall under the definition of third party administrators, they would no longer be subject to the insurance maintenance tax. It would be assumed that the lost maintenance tax revenues could be compensated through the assessments and fees established under the other provisions of the bill.

The bill would take effect September 1, 2005, with the exception of the required COA, PBM license, and administrative and civil penalty provisions, which would take effect January 1, 2006.

## **Methodology**

The bill would decrease the COA fee from \$500 to \$300, but it would require PBMs to renew their certificates every two years. The bill would increase the annual report filing fee from \$100 to \$1,000. Additional revenue of \$900 from each PBM each year would be realized from the increased filing fees and \$300 every other year would be realized from the renewal of COA. The bill would allow TDI to examine PBMs.

According to TDI, all current 24 PBMs would be examined annually in fiscal years 2006 through 2008, would be examined on a staggered triennial schedule beginning in 2009, and would be able to file for a COA when the bill takes effect. TDI estimates that based on the number of PBM applications for fiscal year 2006, two Insurance Specialist V and two Nurse IV positions would be needed to perform qualifying examinations of the current 24 PBMs. For Health Maintenance Organizations (HMOs), TDI has averaged three full-time equivalents (FTEs) per COA exam and in fiscal year 2004 TDI conducted approximately 16 examinations of HMOs. After fiscal year 2008, TDI estimates that PBMs would be examined on a staggered triennial basis and that they can perform the first triennial examinations on half of the PBMs in fiscal years 2009 and 2010.

Although TDI's HMO Division examinations are funded by cost recovery charges to the regulated entities, Section 4154.101 of the bill would allow a cost recovery charge of \$500 per examination. Therefore the average cost for each examination would be \$1,115 [\$1,615 - \$500]. TDI estimates examination travel costs for fiscal years 2006 through 2008 to be \$26,751 [\$1,115 x 24 examinations per fiscal year] and for fiscal years 2009 through 2010 to be \$13,376 [\$1,115 x 12 examinations].

According to TDI, four FTEs would be required to implement the provisions of the bill from 2006 – 2008 and only two FTEs would be required in 2009 – 2010. The total costs for the additional FTEs in General Revenue – Insurance Companies Maintenance Tax and Insurance Department Fees, will be \$249,323 in fiscal year 2006, \$229,843 in fiscal years 2007 through 2008, and \$114,921 in fiscal years 2009 through 2010. Salaries for two Nurse IV positions will be \$79,416 for fiscal years 2006 through 2008 and \$39,708 in fiscal years 2009 through 2010 for one Nurse IV position. Salaries for two

Insurance Specialist V positions will be \$70,200 for fiscal years 2006 through 2008 and \$35,100 in fiscal years 2009 through 2010 for one Specialist V position. According to TDI, travel costs related to these 16 HMO examinations in fiscal year 2004 were \$25,388 or \$1,587 per exam. Based on a two year average, the average travel cost per examination would be \$1,615.

Since the board renews its current licenses biennially, it is assumed that PBMs would be renewed biennially as well. Assuming that all 23 PBMs would receive this license, additional revenue of \$11,500 would be realized every other year from the renewal of licenses. The board estimates that approximately 300 new complaints will be generated each year with the implementation of the bill. Based on this workload, one additional FTE (Investigator III) would be required. The total cost in GR-Dedicated Pharmacy Board Operating Account No. 523 for the additional FTE will be \$68,214 in fiscal year 2006 and \$41,244 in fiscal years 2007 through 2010. Salary for the Investigator III position would be \$31,068 for fiscal years 2006 through 2010.

This analysis assumes that all costs for TDI and the board related to implementing the provisions of the bill would be covered by generated revenues in accordance with current law. Based on the analysis of TDI, the board, and the Comptroller of Public Accounts, it is estimated that the GR-Dedicated Pharmacy Board Operating Account No. 523 would realize revenue increases of \$12,000 in fiscal years 2006, 2008, and 2010 and that the GR-Dedicated – Texas Department of Insurance Operating Fund Account No. 36 would realize revenue increases of \$43,200 in fiscal year 2006; \$36,000 in fiscal year 2007; \$43,200 in fiscal year 2008; \$28,000 in fiscal year 2009; and \$35,000 in fiscal year 2010.

### **Technology**

The Department of Insurance estimates a technology impact \$8,384 in fiscal year 2006 to supply computer hardware and software. The Board of Pharmacy estimates a technology impact of \$10,000 in fiscal year 2006 for new licensing software and website enhancements.

### **Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 304 Comptroller of Public Accounts, 454 Department of Insurance, 515 Board of Pharmacy

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