BILL ANALYSIS

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C.S.S.B. 1536
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Health & Human Services
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 2003, the legislature directed the Texas Health and Human Services Commission (HHSC) to implement a preferred drug list (PDL) for prescription drugs prescribed to enrollees in Medicaid or the Children's Health Insurance Program (CHIP). A Pharmaceutical and Therapeutics (P&T) Committee composed of practicing physicians and pharmacists advises HHSC on which drugs to designate as "preferred" or "non-preferred."

To be classified as preferred, state law specifies that a drug must not only be clinically effective, but also that the manufacturer provide a supplemental rebate. Without the rebate, even clinically efficacious and safe drugs cannot be classified as preferred. State law requires the physician or prescriber to obtain prior approval before the prescription for a non-preferred drug can be filled (with exceptions in an emergency). In some cases, the manufacturer may only give a rebate for certain strengths or formulations of its product (such as tablet form). If a physician needs a different dose or a different method of delivery, such as liquid formulation, prior approval must still be obtained even if the drug is otherwise safe and effective. When there is not a choice of dosage strength or delivery among preferred drugs, pediatricians and family physicians caring for children are most burdened since children often need lower doses and/or liquid agents to successfully take the medication.

Current statute does not require HHSC to disclose the factors that determine whether a drug is classified as preferred or non-preferred. Thus, physicians and prescribers do not know whether a drug was excluded from the preferred list solely because no rebate was provided or because of clinical issues.

Finally, the Medicaid PDL prior approval process is outdated. Currently, a physician or prescriber can only request approval through phone or fax. No electronic or Internet-based mechanism is available. While implementation of the PDL has resulted in considerable savings to the state, it also has increased physicians' and providers' administrative costs. Physicians' second most cited reason, after payment rates, for not participating in Medicaid is the program's administrative costs. Streamlining the Medicaid PDL would help minimize those expenses and help the state recruit more physicians into the program.

This legislation amends the Medicaid PDL to provide greater transparency regarding what factors the state and the P&T committee used in classifying a drug as preferred or non-preferred; ensure that for each preferred drug class, there will be multiple strengths and dosages available and multiple delivery methods; and require HHSC to offer electronic methods, in addition to phone and fax, to obtain prior approval.

C.S.S.B. 1536 relates to preferred drug lists adopted by HHSC and associated requirements regarding supplemental rebates, prior authorization, and public notification.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Health and Human Services Commission is modified in SECTION 4 (Section 531.074, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 531.071, Government Code, by amending Subsection (c) and adding Subsection (d), as follows:

(c) Provides that general information about the aggregate costs of different classes of drugs is not confidential under Subsection (a) (relating to certain information obtained or maintained by the Health and Human Services Commission (HHSC), except that a drug name or information that could reveal a drug name is confidential.

(d) Provides that information about whether HHSC and a manufacturer or labeler reached or did not reach a supplemental rebate agreement under Section 531.070 (Supplemental Rebates) for a particular drug is not confidential under Subsection (a).

SECTION 2. Amends Section 531.072, Government Code, by adding Subsections (b-1), (b-2), and (c-1), as follows:

(b-1) Authorizes the preferred drug lists, notwithstanding Subsection (b) (relating to authorizing the preferred drug list to contain only certain drugs provided by a manufacturer or labeler), to contain a drug provided by a manufacturer or labeler that has not reached a supplemental rebate agreement with HHSC, if HHSC determines that inclusion of the drug on the preferred drug lists will have no negative cost impact to the state or a drug provided by a manufacturer to labeler that has reached an agreement with HHSC to provide program benefits in lieu of supplemental rebates, as described by Section 531.070.

(b-2) Requires that consideration be given to including all strengths and dosage forms of a drug on the preferred drug lists.

(c-1) Requires HHSC, in addition to the considerations listed under Subsection (c) (relating to requiring HHSC to have certain considerations in making a decision regarding the placement of a drug on each of the preferred drug lists), to consider the inclusion of multiple methods of delivery within each drug class, including liquid, tablet, capsule, and orally disintegrating tablets.

SECTION 3. Amends Section 531.073, Government Code, by adding Subsection (g) and (h), as follows:

(g) Requires HHSC to ensure that requests for prior authorization may be submitted by telephone, facsimile, or electronic communications through the Internet.

(h) Requires HHSC to provide an automated process that may be used to assess a Medicaid recipient's medical and drug claim history to determine whether the recipient's medical condition satisfies the applicable criteria for dispensing a drug without an additional prior authorization request.

SECTION 4. Amends Sections 531.074, Government Code, by amending Subsections (i) and (m) and adding Subsections (f-1) and (i-1), as follows:

(f-1) Requires the Pharmaceutical and Therapeutics Committee (committee) to meet in public and permit public comment before voting on any changes in the preferred drug lists. Requires that minutes of each meeting be made available to the public not later than the 10th business day after the date the minutes are approved. Authorizes the committee to meet in executive session to discuss confidential information as described by Subsection (i).

(i) Requires HHSC to adopt rules governing the operation of the committee, including rules governing the procedures used by the committee for providing notice of a meeting and rules prohibiting the committee from discussing confidential information described by Section 531.071 in a public meeting. Requires the committee to comply with the rules adopted under this subsection and Subsection (i-1).

(i-1) Requires HHSC by rule, in addition to the rules under Subsection (i), to require the committee or the committee's designee to present a summary of any clinical efficacy and safety information or analyses regarding a drug under consideration for a preferred drug

list that is provided to the committee by a private entity that has contracted with HHSC to provide the information. Requires the committee or the committee's designee to provide the summary in electronic form before the public meeting at which consideration of the drug occurs. Requires that confidential information described by Section 531.071 be omitted from the summary. Requires that the summary be posted on HHSC's Internet website.

(m) Requires HHSC or HHSC's agent to publicly disclose, immediately after the committee deliberations conclude, each specific drug recommended for or against preferred drug list status for each drug class included in the preferred drug list for the Medicaid vendor drug program. Requires that the disclosure be posted on HHSC's Internet website not later than the 10th business day, rather than that the disclosure be made in writing, after the conclusion of committee deliberations that result in recommendations made to the executive commissioner of HHSC regarding the placement of drugs on the preferred drug list. Requires that the public disclosure include the general basis for the recommendation for each drug class and, for each recommendation, whether a supplemental rebate agreement or a program benefit agreement was reached under Section 531.070.

SECTION 5. Amends Subchapter B, Chapter 531, Government Code, by adding Section 531.0741, as follows:

Sec. 531.0741. PUBLICATION OF INFORMATION REGARDING COMMISSION DECISIONS ON PREFERRED DRUG LIST PLACEMENT. Requires HHSC to publish on HHSC's Internet website any decisions on preferred drug list placement, including a list of drugs reviewed and HHSC's decision for or against placement on the preferred drug list of each drug reviewed; for each recommendation, whether a supplemental rebate agreement or a program benefit agreement was reached under Section 531.070; and the rationale for any departure from a recommendation of the pharmaceutical and therapeutics committee established under Section 531.074.

SECTION 6. Requires the executive commissioner of HHSC, not later than December 1, 2010, to implement Sections 531.073(g) and (h), Government Code, as added by this Act.

SECTION 7. Requires a state agency affected by the provision, if before implementing any provision of this Act the agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, to request the waiver or authorization and authorizes the agency to delay implementing that provision until the waiver or authorization is granted.

SECTION 8. Effective date: September 1, 2009.