By: Uresti S.B. No. 1536

A BILL TO BE ENTITLED

AN ACT

relating to preferred drug lists, including confidentiality, supplemental rebate, prior authorization, and publication requirements.

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

SECTION 1. Subsections (a) and (c), Section 531.071, Government Code, are amended to read as follows:

(a) Notwithstanding any other state law, financial information obtained or maintained by the commission regarding prescription drug rebate negotiations or a supplemental medical assistance or other rebate agreement, including trade secrets, rebate amount, rebate percentage, and manufacturer or labeler pricing, is confidential and not subject to disclosure under Chapter 552.

(c) Notwithstanding Subsection (a), the following information is not confidential:

(1) general [~~General~~]information about the aggregate costs of different classes of drugs;

(2) the fact that a supplemental rebate agreement was or was not reached between the commission and a manufacturer or labeler for a particular drug; and

(3) the fact that a supplemental rebate agreement for a particular drug was or was not of a sufficient amount to make the drug cost-effective for preferred drug list placement, provided

that the amount of the rebate or other confidential financial information described in this section is not disclosed [~~is not confidential under Subsection (a)~~].

SECTION 2. Section 531.072, Government Code, is amended by amending Subsection (b) and adding Subsections (b-1), (b-2), and (g) to read as follows:

(b) The preferred drug lists may contain only drugs provided by a manufacturer or labeler that reaches an agreement with the commission on supplemental rebates under Section 531.070 unless one of the following exceptions is met:

(1) the commission determines that the drug provided by a generic manufacturer or labeler without a supplemental rebate is as cost-effective as or more cost-effective than a drug provided by a brand name manufacturer or labeler who has reached a supplemental rebate agreement with the commission in the same drug class; or

(2) a program benefit agreement as described in Section 531.070 has been reached by the commission and a labeler or manufacturer.

(b-1) A placement of a drug on the preferred drug list must include all strengths and dosages.

(b-2) Each drug class must include multiple methods of delivery of the drug, including liquid, tablet, capsule, and orally disintegrating tablet.

(g) Beginning one year after the last review of the drug or its drug class, a generic manufacturer or labeler may make an application or request to have its drug reconsidered for preferred

drug placement based upon satisfaction of the cost-effectiveness exception described by Subsection (b)(1).

SECTION 3. Section 531.073, Government Code, is amended by adding Subsection (g) to read as follows:

(g) The commission shall ensure that prior authorization claims submission may occur through multiple telecommunication modes, including electronic point-of-sale submission, telephonic submission, fax submission, and electronic communications via the Internet.

SECTION 4. Subsections (i) and (m), Section 531.074, Government Code, are amended to read as follows:

(i) The commission shall adopt rules governing the operation of the committee, including rules:

(1) governing the procedures used by the committee for providing notice of a meeting; [~~and~~]

(2) [~~rules~~] prohibiting the committee from discussing confidential financial information described by Section 531.071 in a public meeting; and

(3) requiring the committee or its delegate to present in oral and written form, at the public meeting, a summary of any clinical efficacy and safety information or analyses provided to the committee by a private entity that has contracted with the commission to provide such information. Confidential financial information described in Section 531.071 shall be omitted from the summary. The written summary shall be posted to the Internet. [~~The committee shall comply with the rules adopted under this subsection.~~]

(m) The commission or the commission's agent shall publicly disclose, for each specific drug, a recommendation [~~recommended~~] for or against preferred drug list status, for each drug class included in the preferred drug list for the Medicaid vendor drug program. The disclosure must be made in writing and posted to the Internet after the conclusion of committee deliberations that result in recommendations made to the executive commissioner regarding the placement of drugs on the preferred drug list. Such public disclosure shall include:

(1) the general basis for each recommendation for or against placement on the preferred drug list, including a statement of satisfaction of or failure to meet the criteria listed in Subsection (h);

(2) for all recommendations of the committee supporting placement of a drug on the preferred drug list, a statement that a supplemental rebate agreement was reached or, in the absence of a supplemental rebate agreement, a statement noting which exception described in Section 531.072(b) has been satisfied; and

(3) for all recommendations of the committee against placement of a drug on the preferred drug list, a statement of which of the criteria listed in Subsection (h) were not satisfied and, if the clinical efficacy or safety criterion was not satisfied, a summary of the information relied upon by the committee supporting such conclusion.

SECTION 5. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.0741 to read as follows:

Sec. 531.0741. PUBLICATION OF INFORMATION RELATING TO COMMISSION DECISION-MAKING. The commission shall publish on the Internet its decisions on preferred drug list placement including:

(1) a list of drugs reviewed and the commission's decision for or against placement on the preferred drug list for each drug;

(2) a statement that a supplemental rebate agreement was or was not reached between the commission and a manufacturer or labeler for a particular drug and, if a supplemental rebate agreement was reached, a statement that such agreement was or was not of a sufficient amount to make the drug cost-effective for preferred drug list placement, without disclosing the amount of the rebate or other confidential information described in Section 531.071; and

(3) the rationale for any departure from the recommendations of the Pharmaceutical and Therapeutics Committee and, if a recommendation was rejected for safety or clinical efficacy reasons, information supporting such a decision.

SECTION 6. This Act takes effect September 1, 2009.