By: Uresti S.B. No. 1536

(In the Senate - Filed March 9, 2009; March 17, 2009, read first time and referred to Committee on Health and Human Services; May 5, 2009, reported adversely, with favorable Committee Substitute by the following vote: Yeas 9, Nays 0; May 5, 2009, sent to printer.)

COMMITTEE SUBSTITUTE FOR S.B. No. 1536 By: Uresti

A BILL TO BE ENTITLED
AN ACT

relating to preferred drug lists adopted by the Health and Human Services Commission and associated requirements regarding supplemental rebates, prior authorization, and public notification.

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

SECTION 1. Section 531.071, Government Code, is amended by amending Subsection (c) and adding Subsection (d) to read as follows:

(c) General information about the aggregate costs of different classes of drugs is not confidential under Subsection (a), except that a drug name or information that could reveal a drug name is confidential.

(d) Information about whether the commission and a manufacturer or labeler reached or did not reach a supplemental rebate agreement under Section 531.070 for a particular drug is not confidential under Subsection (a).

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

(b-1) Notwithstanding Subsection (b), the preferred drug lists may contain:

(1) a drug provided by a manufacturer or labeler that has not reached a supplemental rebate agreement with the commission if the commission determines that inclusion of the drug on the preferred drug lists will have no negative cost impact to the state; or

(2) a drug provided by a manufacturer or labeler that has reached an agreement with the commission to provide program benefits in lieu of supplemental rebates, as described by Section 531.070.

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

(c-1) In addition to the considerations listed under Subsection (c), the commission shall consider the inclusion of multiple methods of delivery within each drug class, including liquid, tablet, capsule, and orally disintegrating tablets.

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

(g) The commission shall ensure that requests for prior authorization may be submitted by telephone, facsimile, or electronic communications through the Internet.

(h) The commission shall 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. Section 531.074, Government Code, is amended by amending Subsections (i) and (m) and adding Subsections (f-1) and (i-1) to read as follows:

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

(i) The commission shall 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. The committee shall comply with the rules adopted under this subsection and Subsection (i-1).

(i-1) In addition to the rules under Subsection (i), the commission by rule shall 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 the commission to provide the information. The committee or the committee's designee shall provide the summary in electronic form before the public meeting at which consideration of the drug occurs. Confidential information described by Section 531.071 must be omitted from the summary. The summary must be posted on the commission's Internet website.

(m) The commission or the commission's agent shall 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. The disclosure must be posted on the commission's Internet website not later than the 10th business day [~~made in writing~~] 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. The public disclosure must include:

(1) the general basis for the recommendation for each drug class; and

(2) for each recommendation, whether a supplemental rebate agreement or a program benefit agreement was reached under Section 531.070.

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 REGARDING COMMISSION DECISIONS ON PREFERRED DRUG LIST PLACEMENT. The commission shall publish on the commission's Internet website any decisions on preferred drug list placement, including:

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

(2) for each recommendation, whether a supplemental rebate agreement or a program benefit agreement was reached under Section 531.070; and

(3) the rationale for any departure from a recommendation of the pharmaceutical and therapeutics committee established under Section 531.074.

SECTION 6. Not later than December 1, 2010, the executive commissioner of the Health and Human Services Commission shall implement Subsections (g) and (h), Section 531.073, Government Code, as added by this Act.

SECTION 7. 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 8. This Act takes effect September 1, 2009.

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