

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**April 24, 2009**

**TO:** Honorable John T. Smithee, Chair, House Committee on Insurance

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

**IN RE: HB1696** by Isett (Relating to the regulation of pharmacy benefit managers and to payment of claims to pharmacies and pharmacists.), **Committee Report 1st House, Substituted**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB1696, Committee Report 1st House, Substituted: an impact of \$0 through the biennium ending August 31, 2011.

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)<br>Impact to General Revenue Related<br>Funds |
|-------------|--|
| 2010        | \$0  |
| 2011        | \$0  |
| 2012        | \$0  |
| 2013        | \$0  |
| 2014        | \$0  |

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

| Fiscal Year | Probable Revenue Gain<br>from<br><i>Insurance Maint Tax Fees</i><br>8042 | Probable (Cost) from<br><i>Insurance Maint Tax Fees</i><br>8042 | Change in Number of State<br>Employees from FY 2009 |
|-------------|--|---|---|
| 2010        | \$237,619  | (\$237,619)   | 3.0   |
| 2011        | \$223,795  | (\$223,795)   | 3.0   |
| 2012        | \$223,795  | (\$223,795)   | 3.0   |
| 2013        | \$223,795  | (\$223,795)   | 3.0   |
| 2014        | \$223,795  | (\$223,795)   | 3.0   |

**Fiscal Analysis**

The bill would amend the Insurance Code to expand the regulation of pharmacy benefit managers and to change the process for payment of claims to pharmacies and pharmacists. The bill would require pharmacy benefit managers (PBMs) to register with the Texas Department of Insurance (TDI) as third-party administrators, and to obtain approval of the prescribing practitioner before requesting substitution of a lower-priced generic drug. The bill also would require notice by PBMs to pharmacies of contract termination and set timeframes for adjusting payments to pharmacies after price increases by manufacturers.

The bill would establish deadlines for payment of adjudicated claims to pharmacies by a PBM and prohibit a PBM from using extrapolation to complete a pharmacy audit. The bill also would establish a

pharmacy claim dispute investigation and resolution process by TDI, with provision of appeal to the State Office of Administrative Hearings (SOAH). The bill would provide for injunctions to restrain violation of or to compel compliance with TDI orders. The bill would allow TDI to adopt rules as necessary to implement the bill. The bill would be effective on September 1, 2009 for contracts beginning on or after January 1, 2010.

## **Methodology**

Based on analysis provided by TDI, it is anticipated that 3 full-time-equivalent positions (FTEs) will be required to perform the pharmacy claim dispute investigation, resolution, and appeal process. The 3 FTEs would cost \$163,390 for salaries and wages with \$46,680 in associated benefits, \$7,500 in travel costs, and \$6,225 in consumables, telephone, and other operating expenses for each fiscal year of the 2010-11 biennium. Additionally, in fiscal year 2010, \$13,824 is anticipated for one-time equipment costs. Since insurance maintenance tax is self-leveling, this analysis assumes the costs to implement this bill would come from fund balances or the maintenance tax would be set to recover a higher level of revenue.

Based on the analysis by TDI, it is assumed that there would be a one-time revenue gain of \$1,850 in the General Revenue Dedicated Account Fund 36 in fiscal year 2010 because the bill would result in additional Health Maintenance Organization form filings. Since General Revenue Dedicated Account Fund 36 is a self-leveling account, this analysis assumes all revenue generated would go toward fund balances or the maintenance tax would be set to recover a lower level of revenue the following year.

Based on the information provided by the Teacher Retirement System, the bill will have no significant fiscal impact on health plans administered by the agency.

Based on information provided by the University of Texas System, it is anticipated that the bill will have no significant fiscal impact because the group insurance programs' pharmacy benefit manager currently meets the majority of the bill's requirements.

Based on information provided by Employee Retirement System, the bill would result in a decrease in investment income due to the expedited payment process. It is anticipated that the agency can absorb this loss in revenue within the agency's budget.

Based on information provided by SOAH, the bill would result in an increase in hearing requests. The agency indicates that the costs associated with implementing the provisions of the bill could be absorbed within existing resources.

## **Technology**

The bill is anticipated to have a technology impact of \$4,332 in fiscal year 2010.

## **Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 454 Department of Insurance, 323 Teacher Retirement System, 327 Employees Retirement System, 360 State Office of Administrative Hearings, 720 The University of Texas System Administration

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