LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 14, 2009

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

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

IN RE: **HB2030** by Zerwas (Relating to the Medicaid Drug Utilization Review Program and prescription drug use under the Medicaid program.), **As Passed 2nd House**

Estimated Two-year Net Impact to General Revenue Related Funds for HB2030, As Passed 2nd House: a negative impact of ($94,238,008) 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) Impact to General Revenue Related Funds
2010	($44,284,435)
2011	($49,953,573)
2012	($58,044,484)
2013	($66,191,420)
2014	($75,481,944)

All Funds, Five-Year Impact:

Fiscal Year	Probable (Cost) from *General Revenue Fund* 1	Probable (Cost) from *Federal Funds* 555	Probable Revenue (Loss) from *Vendor Drug Rebates Sup Rebates* 8081	Probable Revenue (Loss) from *Federal Funds - Vendor Drug Rebates Sup Rebates* 555
2010	($34,427,544)	($49,114,178)	($20,620,112)	($29,416,560)
2011	($38,914,787)	($55,860,632)	($23,307,814)	($33,457,443)
2012	($44,404,262)	($63,793,258)	($26,531,321)	($38,116,146)
2013	($50,692,798)	($72,827,664)	($30,215,360)	($43,408,812)
2014	($57,871,915)	($83,141,524)	($34,410,952)	($49,436,397)

Fiscal Year	Probable Revenue Gain from *Vendor Drug Rebates Medicaid* 706	Probable Revenue Gain from *Federal Funds - Vendor Drug Rebates Medicaid* 555
2010	$10,763,221	$15,354,762
2011	$12,269,028	$17,611,703
2012	$12,891,099	$18,519,962
2013	$14,716,738	$21,142,759
2014	$16,800,923	$24,136,999

Fiscal Analysis

As recommended in the Legislative Budget Board's 2009 *Government Effectiveness and Efficiency Report* entitled "Strengthen the Texas Medicaid Drug Utilization Review Program to Promote Safety and Contain Spending," the bill would amend Chapter 531 of the Government Code to require the Health and Human Services Commission (HHSC) to increase the number and type of retrospective drug use reviews performed each year under the Medicaid Drug Utilization Review (DUR) program. HHSC would be required to include a detailed description of Medicaid DUR program activities and cost savings estimates for retrospective and prospective reviews in the program's federally required annual report and to post the annual report on its website. The bill would require HHSC to monitor and analyze Medicaid prescription drug use and expenditure patterns and post certain data on its website. The bill prohibits Medicaid DUR board members from having a contractual relationship, ownership interest, or other conflict of interest with a pharmaceutical manufacturer or labeler or with an entity engaged by HHSC to assist with administering the Medicaid DUR program. HHSC would be allowed to adopt rules that identify prohibited relationships or require the Medicaid DUR board to develop a conflict of interest policy.

The bill would also require HHSC to ensure that prescriptions written under the Medicaid Program are valid for no more than one year.

The bill would amend Chapter 531 of the Government Code regarding information that is confidential with respect to the Medicaid Vendor Drug program's preferred drug list (PDL). The bill would allow the PDL to contain drugs for which no supplemental rebate agreement was reached if it would not have a negative cost impact to the state. It would require HHSC to consider including all strengths and dosages of a drug on the PDL, and to consider including multiple methods of delivery within each drug class, including liquid, tablet, capsule, and orally disintegrating tablet. The bill would require the commission to ensure that prior authorization requests may be submitted by telephone, facsimile, or electronic communications via the Internet. HHSC would provide an automated process to determine whether a drug may be dispensed without an additional prior authorization request. The bill would require HHSC to publish on the Internet specific non-confidential information regarding HHSC decisions concerning preferred drug list placement of individual drug products.

The bill requires HHSC to allow a physician to write a total of 24 prescriptions each year without obtaining prior authorization for drugs that would otherwise require prior authorization and requires that HHSC provide reimbursement for those drugs under the Medicaid Vendor Drug Program.

This bill would take effect September 1, 2009.

Methodology

Implementing strategies to strengthen the Medicaid DUR program has the potential to improve the quality of pharmaceutical care and contain Medicaid prescription drug spending. HHSC currently contracts with an entity to perform retrospective drug use reviews. Per HHSC's contract with this entity, HHSC is guaranteed cost savings equal to twice the amount paid to the contracted entity for each retrospective drug use review performed. As a result, the implementation of additional retrospective drug use reviews would be cost neutral. It is assumed that any cost to implement the provisions of the bill related to the annual report, analysis of prescription drug data, and the conflict of interest provision for the Medicaid DUR board would be minimal and can be absorbed within available resources.

Based on HHSC's analysis, any cost to implement provisions of the bill related to the period of validity for prescription drugs written under the Medicaid Program can be absorbed within available resources.

The requirement for the agency to consider including multiple dosages and methods of delivery is assumed to have no fiscal impact; it is assumed that the agency would not implement unless there was no signficant fiscal impact to do so. It is assumed that the automated process for certain drug dispensing without prior authorization would require system programming expenditures. The requirement to publish HHSC PDL decisions on the Internet would result in an increased amount of

staff time and resources needed to post the detailed information requested. It is assumed that these costs could be absorbed within current resources.

The provisions of the bill related to allowing physicians to write 24 prescriptions per year without obtaining prior authorization would result in a negative net All Funds fiscal impact of $107,460,411 in fiscal year 2010, $121,659,945 in fiscal year 2011, $141,433,926 in fiscal year 2012, $161,285,137 in fiscal year 2013, and $183,922,866 in fiscal year 2014.

These amounts are based on HHSC's assumption that the bill would result in a 30 percent reduction in savings from the operation of the Medicaid PDL. The assumed reduction in PDL savings is due to an increase in client service expenditures from a shift to prescribing more expensive prescription drugs and a concomitant reduction in Medicaid supplemental rebates. The net All Funds fiscal impact includes a projected increase in federal contract Medicaid Program drug rebates due to increased client service expenditures for more expensive prescription drugs.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 529 Health and Human Services Commission

LBB Staff: JOB, CL, JI, DM