

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

April 22, 2009

TO: Honorable Lois W. Kolkhorst, Chair, House Committee on Public Health

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

IN RE: HB3719 by King, Susan (Relating to preferred drug lists, including confidentiality, supplemental rebate, prior approval and publication requirements.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB3719, As Introduced: a negative impact of (\$109,412,175) 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 | (\$51,848,592) |
| 2011 | (\$57,563,583) |
| 2012 | (\$57,535,909) |
| 2013 | (\$57,535,909) |
| 2014 | (\$57,535,909) |

All Funds, Five-Year Impact:

| Fiscal Year | Probable Savings/ (Cost) from <i>GR Match For Medicaid</i> 758 | Probable Savings/ (Cost) from <i>Federal Funds</i> 555 | Probable Revenue Gain from <i>Vendor Drug Rebates- Medicaid</i> 706 | Probable Revenue (Loss) from <i>Vendor Drug Rebates- Medicaid</i> 706 |
|-------------|------------------------------------------------------------------------------------|------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------|
| 2010 | (\$51,848,592) | (\$73,540,371) | \$17,635,585 | (\$27,493,483) |
| 2011 | (\$57,563,583) | (\$82,303,642) | \$19,854,696 | (\$31,077,086) |
| 2012 | (\$57,535,909) | (\$82,331,316) | \$20,805,277 | (\$35,375,094) |
| 2013 | (\$57,535,909) | (\$82,331,316) | \$23,525,453 | (\$40,287,147) |
| 2014 | (\$57,535,909) | (\$82,331,316) | \$26,630,862 | (\$45,881,269) |

| Fiscal Year | Probable Savings from <i>Vendor Drug Rebates- Medicaid</i> 706 | Probable (Cost) from <i>Vendor Drug Rebates- Medicaid</i> 706 |
|-------------|------------------------------------------------------------------------------------|--------------------------------------------------------------------------------|
| 2010 | \$27,493,483 | (\$17,635,585) |
| 2011 | \$31,077,086 | (\$19,854,696) |
| 2012 | \$35,375,094 | (\$20,805,277) |
| 2013 | \$40,287,147 | (\$23,525,453) |
| 2014 | \$45,881,269 | (\$26,630,862) |

Fiscal Analysis

The bill would amend Section 531.072 (b) (1) of the Government Code to permit the Health and Human Services Commission (HHSC) to include generic drugs on the Medicaid Preferred Drug List (PDL) without a supplemental rebate agreement provided that the drug is as or more cost effective than a brand name drug for which a supplemental rebate or program benefit agreement has been offered. The agency indicates that the inclusion of generic drugs on the PDL without a supplemental rebate agreement would require a state plan amendment and a rule change.

The bill adds Section 531.072 (b-1) and (b-2) to the Government Code to require that drugs placed on the PDL include all strengths and dosages, as well as all methods of delivery of the drug including liquid, tablet, capsule, and orally disintegrating tablet.

The bill would add Section 531.073 (g) to the Government Code to require the commission to ensure that prior authorization requests can occur through multiple telecommunication modes including electronic point-of-sale submission, telephonic submission, fax submission, and electronic communications via the Internet.

The bill would add Section 531.075 which requires HHSC to publish on the Internet specific non-confidential information regarding HHSC decisions concerning preferred drug list placement of individual drug products.

The bill would be effective September 1, 2009.

Methodology

HHSC anticipates increased costs related to the provisions on drug strengths and dosages of \$12 million per fiscal year. The agency also projects that expanding the modes of prior authorization for drugs not on the PDL will increase expenditures by approximately \$111 million in All Funds in fiscal year 2011 and \$126 million in All Funds in subsequent years. This is because the language on "electronic point of sale submission" could be interpreted to allow pharmacists to request prior authorizations, thus potentially increasing the number of prescriptions for drugs not on the PDL. The increase in expenditures would provide an increase in rebate revenues, however, estimated to be \$17.6 million in fiscal year 2010, \$19.8 million in fiscal year 2011, \$20.8 million in fiscal year 2012, \$23.5 million in fiscal year 2013, and \$26.6 million in fiscal year 2014.

The agency estimates a decrease in the percent of PDL rebates collected due to lower prescriptions from the PDL. This results in a revenue loss of \$27.5 million in fiscal year 2010, \$31.1 million in fiscal year 2011, \$35.4 million in fiscal year 2012, \$40.2 million in fiscal year 2013, and \$45.9 million in fiscal year 2014.

The change to contracted services for the addition of prior authorization functionality is estimated to cost \$2.0 million in fiscal year 2010 and \$1.5 million in each subsequent fiscal year.

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 this could be absorbed within current resources.

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, PP, MB