SENATE AMENDMENTS

2nd Printing

By: Zerwas H.B. No. 2030

A BILL TO BE ENTITLED

AN ACT

relating to the Medicaid Drug Utilization Review Program and prescription drug use under the Medicaid program.

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

SECTION 1. Subchapter B, Chapter 531, Government Code, is amended by adding Sections 531.0691, 531.0692, and 531.0693 to read as follows:

Sec. 531.0691. MEDICAID DRUG UTILIZATION REVIEW PROGRAM: DRUG USE REVIEWS AND ANNUAL REPORT. (a) In this section:

(1) "Medicaid Drug Utilization Review Program" means the program operated by the vendor drug program to improve the quality of pharmaceutical care under the Medicaid program.

(2) "Prospective drug use review" means the review of a patient's drug therapy and prescription drug order or medication order before dispensing or distributing a drug to the patient.

(3) "Retrospective drug use review" means the review of prescription drug claims data to identify patterns of prescribing.

(b) The commission shall provide for an increase in the number and types of retrospective drug use reviews performed each year under the Medicaid Drug Utilization Review Program, in comparison to the number and types of reviews performed in the state fiscal year ending August 31, 2009.

(c) In determining the number and types of drug use reviews

to be performed, the commission shall:

(1) allow for the repeat of retrospective drug use reviews that address ongoing drug therapy problems and that, in previous years, improved client outcomes and reduced Medicaid spending;

(2) consider implementing disease-specific retrospective drug use reviews that address ongoing drug therapy problems in this state and that reduced Medicaid prescription drug use expenditures in other states; and

(3) regularly examine Medicaid prescription drug claims data to identify occurrences of potential drug therapy problems that may be addressed by repeating successful retrospective drug use reviews performed in this state and other states.

(d) In addition to any other information required by federal law, the commission shall include the following information in the annual report regarding the Medicaid Drug Utilization Review Program:

(1) a detailed description of the program's activities; and

(2) estimates of cost savings anticipated to result from the program's performance of prospective and retrospective drug use reviews.

(e) The cost-saving estimates for prospective drug use reviews under Subsection (d) must include savings attributed to drug use reviews performed through the vendor drug program's electronic claims processing system and clinical edits screened

through the prior authorization system implemented under Section 531.073.

(f) The commission shall post the annual report regarding the Medicaid Drug Utilization Review Program on the commission's website.

Sec. 531.0692. MEDICAID DRUG UTILIZATION REVIEW BOARD: CONFLICTS OF INTEREST. (a) A member of the board of the Medicaid Drug Utilization Review Program may not have a contractual relationship, ownership interest, or other conflict of interest with a pharmaceutical manufacturer or labeler or with an entity engaged by the commission to assist in the administration of the Medicaid Drug Utilization Review Program.

(b) The executive commissioner may implement this section by adopting rules that identify prohibited relationships and conflicts or requiring the board to develop a conflict-of-interest policy that applies to the board.

Sec. 531.0693. PRESCRIPTION DRUG USE AND EXPENDITURE PATTERNS. (a) The commission shall monitor and analyze prescription drug use and expenditure patterns in the Medicaid program. The commission shall identify the therapeutic prescription drug classes and individual prescription drugs that are most often prescribed to patients or that represent the greatest expenditures.

(b) The commission shall post the data determined by the commission under Subsection (a) on the commission's website and update the information on a quarterly basis.

SECTION 2. 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 3. This Act takes effect September 1, 2009.

ADOPTED

MAY 12 2009

Secretary of the Senate

FLOOR AMENDMENT NO. 1 BY: Deuell

Amend H.B. No. 2030 (Senate committee printing) as follows:

(1) In SECTION 1 of the bill, in the recital (page 1, line 12), strike "and 531.0693" and substitute "531.0693, and 531.0694".

(2) In SECTION 1 of the bill, after added Section 531.0693, Government Code (page 2, between lines 19 and 20), insert the following:

Sec. 531.0694. PERIOD OF VALIDITY FOR PRESCRIPTION. In its rules and standards governing the vendor drug program, the commission, to the extent allowed by federal law and laws regulating the writing and dispensing of prescription medications, shall ensure that a prescription written by an authorized health care provider under the Medicaid program is valid for the lesser of the period for which the prescription is written or one year. This section does not apply to a prescription for a controlled substance, as defined by Chapter 481, Health and Safety Code.

ADOPTED

MAY 12 2009

Secretary of the Senate

FLOOR AMENDMENT NO. 2 BY: Deuell

Amend H.B. No. 2030 (Senate committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill appropriately:

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

(g) Notwithstanding any other provision of this section and subject to the limitation of this subsection, the commission shall allow a physician to write a total of 24 prescriptions each year without obtaining prior authorization for drugs that would otherwise require that authorization, and the commission shall provide reimbursement for those drugs under the Medicaid vendor drug program to the extent reimbursement would be provided if that authorization were obtained. The total number of prescriptions written for a single patient under this subsection may not exceed two per year.

ADOPTED

MAY 1 2 2009

Secretary of the Senate

FLOOR AMENDMENT NO. 3

Amend H.B. No. 2030 (Senate committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill appropriately:

SECTION ____. 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 ____. 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 ____. 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 ____. 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 ____. 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 _____. 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.

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

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 1, 2009

TO: Honorable Jane Nelson, Chair, Senate Committee on Health & Human Services

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 Engrossed**

No significant fiscal implication to the State is anticipated.

The bill would implement recommendations in the report, "Strengthen the Texas Medicaid Drug Utilization Review Program to Promote Safety and Contain Spending," in the Legislative Budget Board *Government Effectiveness and Efficiency Report* submitted to the Eighty-first Texas Legislature, 2009.

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 is 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. HHSC is required 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 is allowed to adopt rules that identify prohibited relationships or require the Medicaid DUR board to develop a conflict of interest policy.

This bill would take effect September 1, 2009.

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.

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

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

March 28, 2009

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

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.), **Committee Report 1st House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would implement recommendations in the report, "Strengthen the Texas Medicaid Drug Utilization Review Program to Promote Safety and Contain Spending," in the Legislative Budget Board *Government Effectiveness and Efficiency Report* submitted to the Eighty-first Texas Legislature, 2009.

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 is 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. HHSC is required 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 is allowed to adopt rules that identify prohibited relationships or require the Medicaid DUR board to develop a conflict of interest policy.

This bill would take effect September 1, 2009.

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.

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

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

March 23, 2009

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

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 Introduced**

No significant fiscal implication to the State is anticipated.

The bill would implement recommendations in the report, "Strengthen the Texas Medicaid Drug Utilization Review Program to Promote Safety and Contain Spending," in the Legislative Budget Board *Government Effectiveness and Efficiency Report* submitted to the Eighty-first Texas Legislature, 2009.

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 is 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. HHSC is required 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 is allowed to adopt rules that identify prohibited relationships or require the Medicaid DUR board to develop a conflict of interest policy.

This bill would take effect September 1, 2009.

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 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, the bill could result in the release of confidential information related to supplemental rebates in the Medicaid Vendor Drug program that would diminish the agency's position when negotiating supplemental rebates. As a result, the bill could result in a significant fiscal impact to HHSC in the form of rebate revenue reductions in the Medicaid Vendor Drug Program. According to HHSC, the agency does not have the information necessary to quantify the amount of reduced rebate revenue.

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