LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

March 23, 2015

TO: Honorable Kevin Eltife, Chair, Senate Committee on Business & Commerce

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: **SB332** by Schwertner (Relating to the use of maximum allowable cost lists related to pharmacy benefits.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for SB332, As Introduced: a negative impact of ($5,482,648) through the biennium ending August 31, 2017.

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
2016	$0
2017	($5,482,648)
2018	($5,894,143)
2019	($6,306,821)
2020	($2,716,540)

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from *General Revenue Fund* 1	Probable Savings/(Cost) from *GR Dedicated Accounts* 994	Probable Savings/(Cost) from *Federal Funds* 555	Probable Savings/(Cost) from *State Highway Fund* 6
2016	$0	$0	$0	$0
2017	($5,482,648)	($189,749)	($963,944)	($821,370)
2018	($5,894,143)	($203,990)	($1,036,292)	($883,018)
2019	($6,306,821)	($218,272)	($1,108,848)	($944,842)
2020	($2,716,540)	($232,452)	($1,180,884)	($1,006,223)

Fiscal Year	Probable Savings/(Cost) from *Other Special State Funds* 998
2016	$0
2017	($20,443)
2018	($21,977)
2019	($23,516)
2020	($25,043)

Fiscal Analysis

The bill would amend Insurance Code to add Subchapter H to Chapter 1369, establishing provisions related to the use of Maximum Allowable Cost (MAC) lists in the administration of pharmacy benefits. The new subchapter would establish criteria for drugs to be included on MAC lists as well as requirements and limitations around the formulation, updating, access to, and disclosure of MAC lists. Affected health benefit plan issuers and pharmacy benefit managers (PBMs) would also be required to establish a process by which a MAC price determination could be appealed by a pharmacy/pharmacist.

Methodology

The Employees Retirement System (ERS) indicates that the bill would require a PBM to develop the MAC for a generic drug based on methodology specified in the bill. As a result, the bill is expected to increase reimbursements to retail pharmacies, the cost of which is reflected in the table. In FY 2014 the ERS healthcare program, the Group Benefits Program (GBP), spent approximately $145 million for retail generics. The PBM for ERS, Caremark, estimates that the bill would increase the cost of generics up to 10 percent. For the purposes of this analysis, ERS assumes a more conservative 5 percent increase. The estimated increases further increased by the benefit cost trend assumption of 8.5% per year for FY 2015 through FY 2017, 7.5% percent in FY 2018, 7.0 percent in FY 2019, and 6.5% in FY 2020.

The costs reflected in the table are based on the allocation of GBP appropriations to ERS in the 2014-15 General Appropriations Act. Other funding decisions at state agencies could impact how this cost would be allocated, since funding for the GBP is proportional to how salaries are paid at state agencies.

The Teacher Retirement System (TRS) indicates the bill would apply to the two healthcare programs that TRS manages, TRS-Care and TRS-ActiveCare. According to TRS, the bill would limit the drugs for which a pharmacy benefit manager can control costs through use of a maximum allowable cost list. As a result, the bill is expected to increase reimbursements to retail pharmacies and affect the generic dispensing rates for both plans. According to TRS, there would be a cost of $5.4 million annually to the TRS-Care program, which covers retired public school employees. Under current law, the state contribution to TRS-Care is 1.0 percent of active employee payroll. It is assumed for the purposes of this analysis that any increased costs to the TRS-Care program would be absorbed by the plan through member premium increases or plan design changes. Costs to the TRS-ActiveCare program are discussed below under Local Government Impact.

The University of Texas (UT) System estimates there would be an increase in the annual cost to the system's health plan associated with implementing the provisions of the bill. UT System assumes the bill would require pharmacy benefit managers to determine the pharmacy reimbursement for certain covered drugs, which are currently classified as generics, using the brand pricing rather than the current maximum allowable cost pricing. Based on information provided by UT System, it is estimated the annual cost to the health plan would be $1.7 million in fiscal year 2017, increasing to $2.2 million in fiscal year 2020. Of these amounts, a portion would be paid from General Revenue and a portion would be paid from university funds.

Based on information provided by the Texas Department of Insurance, the bill would require applicable health plans to file updated provider contracts in order to comply with the bill's requirements. This analysis assumes at least one filing for each Health Maintenance Organization and preferred provider benefit plan, which would result in a one-time increase in fee revenue of approximately $11,700 to be deposited to the General Revenue-Dedicated Texas Department of Insurance Fund 36. Since General Revenue-Dedicated Texas Department of Insurance Fund 36 is a self-leveling account, this analysis also assumes that any additional revenue resulting from the implementation of the bill would accumulate in account fund balances and that TDI would adjust the assessment of the maintenance tax or other fees accordingly in the following year. It is further assumed that all duties and responsibilities necessary to implement the provisions of the bill could be accomplished within existing staff and resources.

The University of A&M System estimates that the system should be able to absorb any additional costs associated with the bill within existing resources.

Local Government Impact

According to the Teacher Retirement System, the provisions of the bill could result in a cost of $2.8 million annually for the TRS-ActiveCare program, a health benefit plan available to employees of public school districts and charter schools. Increased program costs would be passed along through plan design changes or increased premiums paid by school districts or participating employees. The level of increase may vary by the employee's plan choice within TRS-ActiveCare.

Source Agencies: 323 Teacher Retirement System, 327 Employees Retirement System, 454 Department of Insurance, 710 Texas A&M University System Administrative and General Offices, 720 The University of Texas System Administration

LBB Staff: UP, CL, EP, EMo, PFe, ER