

## **BILL ANALYSIS**

Senate Research Center  
86R9144 LED-D

S.B. 1096  
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Health & Human Services  
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As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The Medically Dependent Children Program (MDCP) serves approximately 5,600 children and young adults under the age of 21. The program offers community-based services for children with disabilities who require a nursing facility level of care. MDCP allows children with disabilities and complex medical needs to access Medicaid services on a medical-needs-based criteria, allowing the child to remain at home with family while still accessing and receiving life-sustaining, medically necessary services which keep them alive, stable, and in the community.

Currently, some drugs on the formulary may require prior authorization. Pharmacy prior authorization services for Medicaid Managed Care enrollees are administered by the managed care organization, and the MCOs/PBMs often add their own clinical edits, clinical authorizations, cost ceilings in violation of federal EPSDT and state Medicaid policies, and other additional requirements or barriers, including fail-first or step therapy requirements.

This causes unnecessary and harmful denials and delays, resulting in the child decompensating, their condition deteriorating, and/or causing further complications; ER visits; hospitalizations solely to access medications that could be administered at home or in an outpatient setting; and increased level of care, again resulting in costly and harmful delays; and increased costs to the state.

S.B. 1096 will ensure a prior authorization for a drug that is prescribed to an MDCP enrollee is approved if that drug appears on the formulary without additional barriers, clinical edits or other requirements, fail-first or step therapy, or authorizations, regardless of whether the drug is preferred or not.

The bill also ensures continued access to medications already prescribed for a program enrollee.

As proposed, S.B. 1096 amends current law relating to pharmacy benefits provided through the Medicaid managed care program.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 533.005(a), Government Code, as follows:

(a) Requires a contract between a managed care organization and the Health and Human Services Commission (HHSC) for the organization to provide health care services to recipients to contain:

(1)–(22) makes no changes to these subdivisions;

(23) subject to Subsection (a-1), a requirement that the managed care organization develop, implement, and maintain an outpatient pharmacy benefit plan for its enrolled recipients:

(A) that, except as provided by Paragraph (L)(ii), exclusively employs the vendor drug program formulary and preserves the state's ability to reduce waste, fraud, and abuse under Medicaid;

(B) makes no changes to this paragraph;

(C) that, except as provided by Paragraph (L)(i), includes the prior authorization procedures and requirements prescribed by or implemented under Sections 531.073(b) (relating to prior authorization procedures), (c) (relating to prescriptions prescribed before implementation of a prior authorization requirement), and (g) (relating to methods of submitting prior authorization);

(D)-(I) makes no changes to these paragraphs;

(J)-(K) makes nonsubstantive changes; and

(L) under which the managed care organization or pharmacy benefit manager, as applicable:

(i) is prohibited from requiring a prior authorization, other than a clinical prior authorization, for or imposing any other barriers to a drug that is prescribed to a medically fragile child for a particular disease or treatment and that is on the vendor drug program formulary, regardless of whether the drug is included in the preferred drug list adopted under Section 531.072 (Preferred Drug Lists);

(ii) is required to provide for continued access to a drug prescribed to a child enrolled in the STAR Kids managed care program, regardless of whether the drug is on the vendor drug program formulary or, if applicable on or after August 31, 2023, the managed care organization's formulary;

(iii) is prohibited from using a protocol that requires a child enrolled in the STAR Kids managed care program to use a prescription drug or sequence of prescription drugs other than the drug that the child's physician recommends for the child's treatment before the managed care organization provides coverage for the recommended drug; and

(iv) is required to pay liquidated damages to HHSC for each failure, as determined by HHSC, to comply with this paragraph in an amount that is a reasonable forecast of the damages caused by the noncompliance;

(24) makes no changes to this subdivision;

(25) makes a nonsubstantive change; and

(26) makes no changes to this subdivision.

SECTION 2. Makes application of Section 533.005, Government Code, as amended by this Act, prospective.

SECTION 3. Requires a state agency affected by the provision, if before implementing any provision of this Act the state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, to request the waiver or authorization and authorizes the agency to delay implementing that provision until the waiver or authorization is granted.

SECTION 4. Effective date: September 1, 2019.