By: Davis of Harris H.B. No. 1298

A BILL TO BE ENTITLED

AN ACT

relating to prescription drug cost increases; imposing a civil penalty.

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

SECTION 1. Subtitle A, Title 6, Health and Safety Code, is amended by adding Chapter 441 to read as follows:

CHAPTER 441. PRESCRIPTION DRUG COST TRANSPARENCY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 441.0001. DEFINITIONS. In this chapter:

(1) "Commission" means the Health and Human Services Commission.

(2) "Health benefit plan issuer" means an insurer, health maintenance organization, or other entity authorized to provide health benefit coverage under the laws of this state.

(3) "Manufacturer" means a person engaged in the business of producing, preparing, propagating, compounding, converting, processing, packaging, labeling, or distributing a prescription drug. The term does not include a wholesale distributor or retailer of prescription drugs or a pharmacist licensed under Subtitle J, Title 3, Occupations Code.

(4) "Prescription drug" has the meaning assigned by Section 551.003, Occupations Code.

Sec. 441.0002. REQUEST FOR INFORMATION. The commission or attorney general may request information necessary to carry out the

purposes of this chapter from another state agency. A state agency receiving a request under this section shall provide the requested information in a reasonable time.

SUBCHAPTER B. LISTS OF PRESCRIPTION DRUGS

Sec. 441.0051. COMMISSION LIST BY WHOLESALE ACQUISITION COST. (a) The commission shall annually compile a list of prescription drugs by wholesale acquisition cost.

(b) The list described by Subsection (a) must:

(1) include 10 prescription drugs:

(A) on which the commission or another state agency spends a significant amount of money under a health benefit plan administered by the agency; and

(B) for which the wholesale acquisition cost has increased by at least:

(i) 50 percent during the previous five calendar years; or

(ii) 15 percent during the previous calendar year;

(2) include at least one generic and one brand name drug;

(3) indicate which drugs on the list are specialty drugs;

(4) include the percentage increase of the wholesale acquisition cost for each drug on the list during the previous calendar year and during the previous five calendar years;

(5) rank the drugs on the list from those with the largest increase in wholesale acquisition cost to those with the

smallest increase in wholesale acquisition cost based on the previous calendar year;

(6) state whether each drug on the list was included on the list because of the wholesale acquisition cost increase over the past five years or during the previous calendar year or both; and

(7) provide the state's total expenditure for each drug on the list during the previous calendar year.

Sec. 441.0052. COMMISSION LIST BY STATE COST. (a) In addition to the list described by Section 441.0051, the commission shall annually compile a list of prescription drugs by state cost.

(b) The list described by Subsection (a) must:

(1) include 10 prescription drugs:

(A) on which the commission or another state agency spends a significant amount of money under a health benefit plan administered by the agency; and

(B) for which the cost to the agency, excluding any rebate or other price concession, has increased by at least:

(i) 50 percent during the previous five calendar years; or

(ii) 15 percent during the previous calendar year;

(2) include at least one generic and one brand name drug;

(3) indicate which drugs on the list are specialty drugs;

(4) rank the drugs on the list from those with the

largest increase in net cost to those with the smallest increase based on the previous calendar year; and

(5) state whether each drug on the list was included on the list because of the cost increase over the past five years or during the previous calendar year or both.

Sec. 441.0053. MAJOR HEALTH BENEFIT PLAN ISSUER LIST; REPORT. (a) This section applies only to a health benefit plan issuer that is authorized to write a health benefit plan in this state and that provides health benefit plan coverage for at least 5,000 enrollees.

(b) A health benefit plan issuer shall annually compile a list of prescription drugs by cost.

(c) The list described by Subsection (b) must:

(1) include 10 prescription drugs:

(A) on which the health benefit plan issuer spends a significant amount of money; and

(B) for which the cost to the issuer's health benefit plans, excluding any rebate or other price concession, has increased by at least:

(i) 50 percent during the previous five calendar years; or

(ii) 15 percent during the previous calendar year;

(2) include at least one generic and one brand name drug;

(3) indicate which drugs on the list are specialty drugs;

(4) rank the drugs on the list from those with the largest increase in net cost to those with the smallest increase based on the previous calendar year; and

(5) state whether each drug on the list was included on the list because of the cost increase over the past five years or during the previous calendar year or both.

(d) A health benefit plan issuer shall provide to the attorney general an annual written report on the list described by Subsection (b) that states:

(1) the percentage by which the net cost to the issuer's health benefit plans has increased during the previous calendar year and during the previous five calendar years for each prescription drug on the list; and

(2) the issuer's total expenditure, excluding any rebate or other price concession, for each drug on the list during the previous calendar year.

(e) Except as provided by Section 441.0054(b), information provided to the attorney general under Subsection (d) is confidential and excepted from disclosure under Chapter 552, Government Code.

(f) The commissioner of insurance, in consultation with the executive commissioner, may adopt rules necessary to implement this section, including rules:

(1) designating which prescription drugs are considered to be specialty drugs for purposes of this chapter; and

(2) governing the manner in which a health benefit plan issuer identifies a drug as a specialty drug for purposes of

this chapter.

Sec. 441.0054. REPORT TO ATTORNEY GENERAL. (a) Not later than June 1 of each year, the commission and each health benefit plan issuer to which Section 441.0053 applies shall provide each list required under this subchapter to the attorney general.

(b) The attorney general and commission shall post the lists described by Subsection (a) on the attorney general's and commission's Internet websites.

SUBCHAPTER C. PRICE JUSTIFICATION

Sec. 441.0101. ATTORNEY GENERAL LIST. (a) Using the lists provided under Section 441.0054 and except as provided by Subsection (b), the attorney general shall compile an aggregate list of 15 prescription drugs for which the greatest amount of money was spent across all payers during the previous calendar year.

(b) If fewer than 15 prescription drugs appear on more than one payer's list, the attorney general shall rank the remaining drugs based on the amount of money spent by any one payer during the previous calendar year, in descending order, and may select as many of the drugs based on that ranking as necessary to reach a total of 15 drugs required under Subsection (a).

(c) The attorney general shall provide written notice to each manufacturer of a prescription drug on the list described by Subsection (a) of the drug's placement on the list and the manufacturer's duties under this subchapter.

Sec. 441.0102. PRICE JUSTIFICATION REQUIRED. (a) On receipt of the notice described by Section 441.0101(c), a manufacturer shall provide to the attorney general in the form and

manner prescribed by the attorney general a written report on the prescription drug described by the notice.

(b) The report described by Subsection (a) must include:

(1) a justification for the increase in the net cost of the prescription drug for the commission, a health benefit plan issuer, or both; and

(2) all relevant information and supporting documentation necessary to support the justification described by Subdivision (1), including:

(A) each factor that specifically caused the net cost increase;

(B) the percentage of the total cost increase attributable to each factor; and

(C) an explanation of the role of each factor in contributing to the cost increase.

(c) A manufacturer shall provide the report described by Subsection (a) in the form and manner prescribed by the attorney general to the attorney general.

(d) A manufacturer shall provide additional information concerning a listed prescription drug or a cost increase to the attorney general on request by the attorney general.

(e) A manufacturer may request a portion of the information provided to be excepted from publication and held as confidential in accordance with Section 552.110, Government Code, or other applicable law, and shall provide an explanation for each request to the attorney general. If the attorney general finds that the request is justified, the information shall:

(1) be redacted from the report provided under this section;

(2) be confidential; and

(3) be excepted from disclosure under Chapter 552, Government Code.

(f) The attorney general may adopt rules necessary to implement this section.

Sec. 441.0103. ATTORNEY GENERAL REPORT TO LEGISLATURE. (a) Not later than December 1 of each year, the attorney general shall provide a written report to the legislature on the manufacturer reports described by Section 441.0102 received by the attorney general during the previous calendar year.

(b) The attorney general and commission shall post the report described by Subsection (a) and each copy of a manufacturer's report provided under Section 441.0102, redacted as necessary, on the attorney general's and commission's Internet websites. The attorney general and commission may inform the public of the availability of the reports posted under this subsection.

Sec. 441.0104. CONSTRUCTION OF SUBCHAPTER. This subchapter may not be construed to restrict the legal ability of a manufacturer to increase prescription drug prices in accordance with federal law.

Sec. 441.0105. ENFORCEMENT. A manufacturer that violates Section 441.0102 or a rule adopted under this chapter is liable to the state for a civil penalty of not more than $10,000 for each violation. Each failure to provide information to the attorney

general is a separate violation. The attorney general may bring suit to provide for injunctive relief or to recover a civil penalty, or both. The attorney general may recover court costs and reasonable attorney's fees.

SECTION 2. As soon as practicable after the effective date of this Act, the executive commissioner of the Health and Human Services Commission shall identify, provide to the attorney general, and post on the commission's Internet website the list of prescription drugs and manufacturers required by Sections 441.0051 and 441.0052, Health and Safety Code, as added by this Act.

SECTION 3. Notwithstanding Section 441.0103, Health and Safety Code, as added by this Act, the attorney general is not required to submit the initial report required by that section before December 1, 2020.

SECTION 4. This Act takes effect September 1, 2019.