

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

April 1, 2019

TO: Honorable Eddie Lucio III, Chair, House Committee on Insurance

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: HB2231 by Oliverson (Relating to the practices and operation of pharmacy benefit managers; providing administrative penalties.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB2231, As Introduced: a negative impact of (\$3,233,424) through the biennium ending August 31, 2021.

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
2020	(\$1,699,587)
2021	(\$1,533,837)
2022	(\$1,533,837)
2023	(\$1,533,837)
2024	(\$1,533,837)

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain from <i>Insurance Maint Tax Fees</i> 8042	Probable (Cost) from <i>Insurance Maint Tax Fees</i> 8042	Probable (Cost) from <i>General Revenue Fund</i> 1	Change in Number of State Employees from FY 2019
2020	\$14,372,625	(\$14,372,625)	(\$1,699,587)	170.0
2021	\$14,126,625	(\$14,126,625)	(\$1,533,837)	170.0
2022	\$14,126,625	(\$14,126,625)	(\$1,533,837)	170.0
2023	\$14,126,625	(\$14,126,625)	(\$1,533,837)	170.0
2024	\$14,126,625	(\$14,126,625)	(\$1,533,837)	170.0

Fiscal Analysis

The bill would amend the Insurance Code relating to the practices and operation of pharmacy benefit managers; providing administrative penalties.

Section 1369.3583 of the bill requires the Texas Department of Insurance (TDI) to establish a complaint resolution program relating to the reimbursement practices of pharmacy benefit managers. Pharmacists or pharmacies may file complaints against pharmacy benefit managers that violate the provisions of the bill. TDI is required to conduct a hearing to determine if pharmacy benefit managers violated the provisions of Insurance Code, Chapter 1369.

Section 1369.403 of the bill states that pharmacists or pharmacies may request mandatory mediation with pharmacy benefit managers to settle a claim. The bill states all parties must participate in an informal settlement teleconference no later than the 30th day after the request was submitted.

Section 1369.408 of the bill states that, if there is no agreed resolution after mediation, then the Chief Administrative Law Judge of the State Office of Administrative Hearings (SOAH) is required to appoint a special judge to conduct a trial for the claim.

Section 1369.411 of the bill states that the Commissioner of Insurance is required to impose an administrative penalty if a pharmacy benefit manager acted in bad faith mediation.

The bill applies only to a contract between a pharmacy benefit manager and a pharmacist or pharmacy entered into or renewed on or after January 1, 2020. The bill would take effect on September 1, 2019.

Methodology

Based on information provided by TDI, the agency anticipates approximately 35,000 complaints from pharmacies or pharmacists each fiscal year. This analysis assumes that there are approximately 35,000 licensed pharmacists in Texas and that each pharmacist would file at least one complaint each year. TDI would require 10 intake specialists to monitor the receipt of complaints and refer complaints to enforcement for investigation. Of the 35,000 complaints, TDI estimates that 20 percent, or 7,000 complaints, would be referred for further investigation. TDI would require 35 investigators to process 7,000 complaints, assuming each complaint will take 10 hours to investigate and each investigator would perform 2,000 hours of work each year.

Of the 7,000 investigations, TDI estimates approximately 3,500 will require a hearing. TDI would require 70 attorneys for litigation, assuming an attorney would spend at least 40 hours on each case and each attorney would perform 2,000 hours of work each year. This analysis assumes that TDI would refer these hearings to SOAH. SOAH would require eight Administrative Law Judges, two legal secretaries, one legal assistant, and one systems administrator to handle the increased workload.

TDI anticipates that there would be approximately 17,500 eligible claims for pharmacy mediation, assuming half of all pharmacists in Texas would file one mediation claim each year. TDI would require 10 mediation processors, two intake specialists, and one auditor to handle the increased workload. Of the 17,500 mediation requests, TDI estimates that approximately 20 percent, or 3,400 requests, would be referred to SOAH for outside mediation. SOAH would require one legal secretary and one legal assistant to handle the increased workload.

To support the primary functions of the Pharmacy Complaint and Mandatory Mediation programs, TDI would require 10 legal secretaries, seven legal assistants, seven managers, two human resources specialists, one systems analyst, and one director.

To respond to the increased workload, TDI anticipates the need for a total of 156.0 additional full-time equivalent (FTE) positions per fiscal year for a total five-year impact of \$70,879,125 from General Revenue - Insurance Companies Maintenance Tax and Insurance Department Fees.

TDI estimates that the 156.0 FTEs would require recurring costs to General Revenue - Insurance Companies Maintenance Tax and Insurance Department Fees of \$10,292,392 in salaries, \$154,386 in payroll contribution costs, and \$3,440,747 in related support and benefit costs each fiscal year. Additional program costs include one-time costs of \$234,000 for computers and related equipment and \$12,000 for telecommunication costs. Additional program costs include recurring costs of \$93,600 for consumable supplies, \$74,500 for training and dues, and \$71,000 for other related technology operating expenses.

Due to the self-leveling nature of the TDI operating fund, this analysis assumes that TDI would adjust the assessment of the maintenance tax to account for any additional costs resulting from the implementation of the bill.

This analysis assumes that there would be a revenue gain relating to the administrative penalties assessed under the provisions of the bill, but the fiscal impact cannot be determined at this time due to the unknown number of violations resulting in the need for penalties.

To respond to the increased workload, SOAH anticipates the need for a total of 14.0 additional full-time equivalent (FTE) positions per fiscal year for a total five-year impact of \$7,834,935 from the General Revenue Fund.

SOAH estimates that the 14.0 FTEs would require recurring costs to the General Revenue Fund of \$1,007,365 in salaries, \$15,110 in payroll contribution costs, and \$336,762 in related support and benefit costs each fiscal year. Additional program costs include one-time costs of \$85,750 for workstations and computers, and \$80,000 for referral tracking software. Additional program costs include recurring costs of \$27,000 for software licenses and maintenance, \$126,140 for rental space, and \$21,460 for other related operating expenses.

Based on information provided by the Employees Retirement System, The University of Texas System Administration, and Texas A&M University System Administration, this analysis assumes that the duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

According to the Health and Human Services Commission, the provisions of the bill would not apply to Medicaid because the provisions conflict with state and/or federal Medicaid law; therefore, no fiscal impact is anticipated. If the provisions did apply to Medicaid, there would likely be a significant fiscal impact.

Technology

This analysis estimates a total one-time technology cost of \$452,000 in fiscal year 2020 and a total recurring cost of \$98,000 each fiscal year thereafter required to implement the provisions of the bill.

TDI estimates one-time technology costs of \$234,000 for computers and \$12,000 for

telecommunication licenses in fiscal year 2020; and recurring costs of \$59,000 for document management subscriptions and \$12,000 for telecommunication licenses each fiscal year thereafter.

SOAH estimates one-time technology costs of \$80,000 for referral tracking software and \$28,000 for computers in fiscal year 2020; and recurring costs of \$27,000 for software licenses and maintenance each fiscal year thereafter.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 327 Employees Retirement System, 360 State Office of Administrative Hearings, 454 Department of Insurance, 515 Board of Pharmacy, 529 Health and Human Services Commission, 710 Texas A&M University System Administrative and General Offices, 720 The University of Texas System Administration

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