By: Oliverson, et al. (Senate Sponsor - Hancock) H.B. No. 1033

(In the Senate - Received from the House April 8, 2021; April 12, 2021, read first time and referred to Committee on Business & Commerce; April 19, 2021, reported favorably by the following vote: Yeas 8, Nays 0; April 19, 2021, sent to printer.)

COMMITTEE VOTE

	Yea	Nay	Absent	PNV
Hancock	X			
Nichols	X			
Campbell	X			
Creighton	X			
Johnson	X			
Menéndez			X	
Paxton	X			
Schwertner	X			
Whitmire	X			

A BILL TO BE ENTITLED

AN ACT

relating to prescription drug price disclosure; authorizing a fee; providing an administrative penalty.

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

SECTION 1. Subchapter A, Chapter 441, Health and Safety Code, is amended by adding Section 441.0003 to read as follows:

Sec. 441.0003. RULES. The executive commissioner may adopt rules to implement this chapter.

SECTION 2. Chapter 441, Health and Safety Code, is amended by adding Subchapter B, and a heading is added to that subchapter to read as follows:

SUBCHAPTER B. PRESCRIPTION DRUG PRICE DISCLOSURE

SECTION 3. Section 441.0002, Health and Safety Code, is transferred to Subchapter B, Chapter 441, Health and Safety Code, as added by this Act, redesignated as Sections 441.0051, 441.0052, 441.0053, and 441.0054, Health and Safety Code, and amended to read as follows:

Sec. 441.0051 [~~441.0002~~]. ANNUAL REPORT [~~DISCLOSURE OF DRUG PRICING INFORMATION~~]. [~~(a)~~] Not later than the 15th day of each calendar year, a pharmaceutical drug manufacturer shall submit a report to the department [~~executive commissioner~~] stating the current wholesale acquisition cost information for the United States Food and Drug Administration-approved prescription drugs sold in or into this state by that manufacturer.

Sec. 441.0052. PRESCRIPTION DRUG PRICE INFORMATION INTERNET WEBSITE. [~~(b)~~] The department [~~executive commissioner~~] shall develop an Internet website to provide to the general public prescription drug price information submitted under Section 441.0051 [~~Subsection (a)~~]. The Internet website shall be made available on the department's [~~Health and Human Services Commission's~~] Internet website with a dedicated link that is prominently displayed on the home page or by a separate easily identifiable Internet address.

Sec. 441.0053. PRESCRIPTION DRUG COST INCREASE REPORT AND INFORMATION. (a) [~~(c)~~] This subsection applies only to a prescription drug with a wholesale acquisition cost of at least $100 for a 30-day supply before the effective date of an increase described by this subsection. Not later than the 30th day after the effective date of an increase of 40 percent or more over the preceding three calendar years or 15 percent or more in the preceding calendar year in the wholesale acquisition cost of a prescription drug to which this subsection applies, a pharmaceutical drug manufacturer shall submit a report to the executive commissioner. The report must include the following

information:

(1) the name of the prescription drug;

(2) whether the prescription drug is a brand name or generic;

(3) the effective date of the change in wholesale acquisition cost; and

(4) [~~aggregate, company-level research and development costs for the most recent year for which final audit data is available;~~

[~~(5) the name of each of the manufacturer's prescription drugs approved by the United States Food and Drug Administration in the previous three calendar years;~~

[~~(6) the name of each of the manufacturer's prescription drugs that lost patent exclusivity in the United States in the previous three calendar years; and~~

[~~(7)~~] a statement regarding the factor or factors that caused the increase in the wholesale acquisition cost and an explanation of the role of each factor's impact on the cost.

(b) If during a calendar year a prescription drug with a wholesale acquisition cost of at least $100 for a 30-day supply increases in price by 40 percent or more over the preceding three calendar years or 15 percent or more in the preceding calendar year in the wholesale acquisition cost of the prescription drug, the pharmaceutical drug manufacturer must include in the annual report submitted under Section 441.0051 the following information:

(1) aggregate, company-level research and development costs for the most recent year for which final audit data is available;

(2) the name of each of the manufacturer's prescription drugs approved by the United States Food and Drug Administration in the previous three calendar years; and

(3) the name of each of the manufacturer's prescription drugs that lost patent exclusivity in the United States in the previous three calendar years.

(c) [~~(d)~~] The quality and types of information and data that a pharmaceutical drug manufacturer submits to the department [~~executive commissioner~~] under Subsections (a) and (b) [~~Subsection (c)~~] must be consistent with the quality and types of information and data that the manufacturer includes in the manufacturer's annual consolidated report on Securities and Exchange Commission Form 10-K or any other public disclosure.

Sec. 441.0054. PUBLICATION OF COST INCREASE INFORMATION. [~~(e)~~] Not later than the 60th day after receipt of the report submitted under Section 441.0051 or 441.0053(a) [~~Subsection (c)~~], the department [~~executive commissioner~~] shall publish the cost increase information required by Section 441.0053 [~~report~~] on the department's prescription drug price information [~~Health and Human Services Commission's~~] Internet website [~~described by Subsection (b)~~].

[~~(f) The executive commissioner may adopt rules to implement this section.~~]

SECTION 4. Subchapter B, Chapter 441, Health and Safety Code, as added by this Act, is amended by adding Section 441.0055 to read as follows:

Sec. 441.0055. FEE. (a) A pharmaceutical drug manufacturer shall submit a fee in the amount provided by department rule with each report submitted under this subchapter.

(b) The executive commissioner by rule shall set the fee in the amount necessary for the department to administer this chapter, not to exceed $400.

SECTION 5. Chapter 441, Health and Safety Code, is amended by adding Subchapter C to read as follows:

SUBCHAPTER C. ENFORCEMENT

Sec. 441.0101. RIGHT TO CORRECT. (a) If the department determines that a pharmaceutical drug manufacturer failed to submit a report or fee required under, or failed to submit the report or fee in the manner prescribed by, Subchapter B and the rules adopted under this chapter, the department shall provide written notice of the failure to the manufacturer.

(b) On receipt of notice described by Subsection (a), a pharmaceutical drug manufacturer shall submit, as applicable:

(1) a report that:

(A) complies with Subchapter B and rules adopted under this chapter; and

(B) addresses the issues raised in the notice; or

(2) the fee required by Section 441.0055.

(c) The department may not assess an administrative penalty under Section 441.0102 against a pharmaceutical drug manufacturer that submits to the department the required report or fee, as applicable, on or before the 45th day after the date the manufacturer receives notice under Subsection (a).

Sec. 441.0102. ADMINISTRATIVE PENALTY. (a) The department may assess an administrative penalty against a person who violates this chapter or a rule adopted under this chapter.

(b) In determining the amount of the penalty, the department shall consider:

(1) the person's previous violations;

(2) the seriousness of the violation;

(3) the person's demonstrated good faith; and

(4) any other matters as justice may require.

(c) The penalty may not exceed $1,000 a day for each violation.

(d) Each day a violation continues may be considered a separate violation.

(e) The enforcement of the penalty may be stayed during the time the order is under judicial review if the person pays the penalty to the clerk of the court or files a supersedeas bond with the court in the amount of the penalty. A person who cannot afford to pay the penalty or file the bond may stay the enforcement by filing an affidavit in the manner required by the Texas Rules of Civil Procedure for a party who cannot afford to file security for costs, subject to the right of the board to contest the affidavit as provided by those rules.

(f) The attorney general may sue to collect the penalty. Money collected under this section shall be deposited in the state treasury and may be appropriated only to the department for the purposes of administrating this chapter.

Sec. 441.0103. ADMINISTRATIVE PROCEDURE. A proceeding to impose an administrative penalty under Section 441.0102 is considered to be a contested case under Chapter 2001, Government Code.

SECTION 6. Sections 1369.502(a) and (c), Insurance Code, are amended to read as follows:

(a) Not later than March [~~February~~] 1 of each year, each pharmacy benefit manager shall file a report with the commissioner. The report must state for the immediately preceding calendar year:

(1) the aggregated rebates, fees, price protection payments, and any other payments collected from pharmaceutical drug manufacturers; and

(2) the aggregated dollar amount of rebates, fees, price protection payments, and any other payments collected from pharmaceutical drug manufacturers that were:

(A) passed to:

(i) health benefit plan issuers; or

(ii) enrollees at the point of sale of a prescription drug; or

(B) retained as revenue by the pharmacy benefit manager.

(c) Not later than June [~~May~~] 1 of each year, the commissioner shall publish the aggregated data from all reports for that year required by this section in an appropriate location on the department's Internet website. The combined aggregated data from the reports must be published in a manner that does not disclose or tend to disclose proprietary or confidential information of any pharmacy benefit manager.

SECTION 7. Sections 1369.503(a) and (c), Insurance Code, are amended to read as follows:

(a) Not later than March [~~February~~] 1 of each year, each

health benefit plan issuer shall submit to the commissioner a report that states for the immediately preceding calendar year:

(1) the names of the 25 most frequently prescribed prescription drugs across all plans;

(2) the percent increase in annual net spending for prescription drugs across all plans;

(3) the percent increase in premiums that were attributable to prescription drugs across all plans;

(4) the percentage of specialty drugs with utilization management requirements across all plans; and

(5) the premium reductions that were attributable to specialty drug utilization management.

(c) Not later than June [~~May~~] 1 of each year, the commissioner shall publish the aggregated data from all reports for that year required by this section in an appropriate location on the department's Internet website. The combined aggregated data from the reports must be published in a manner that does not disclose or tend to disclose proprietary or confidential information of any health benefit plan issuer.

SECTION 8. Subchapter K, Chapter 1369, Insurance Code, is amended by adding Section 1369.5035 to read as follows:

Sec. 1369.5035. CONTENT OF REPORTS. The reports required by Sections 1369.502 and 1369.503 must include information relating to private health benefit plans that cover prescription drugs and are regulated by the department. The reports may not include information relating to:

(1) the child health plan program under Chapter 62, Health and Safety Code, or the health benefits plan for children under Chapter 63, Health and Safety Code; or

(2) the medical assistance program under Chapter 32, Human Resources Code.

SECTION 9. (a) Subchapter C, Chapter 441, Health and Safety Code, as added by this Act, applies only to a violation occurring on or after the effective date of this Act.

(b) Section 1369.5035, Insurance Code, as added by this Act, applies only to a report submitted on or after the effective date of this Act.

SECTION 10. This Act takes effect September 1, 2021.

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