

BILL ANALYSIS

Senate Research Center

S.B. 2402
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Texas continually strives to discover groundbreaking strategies to address increased health care access and affordability. One of the largest drivers of these rising costs is prescription drug pricing and anticompetitive practices in the market on part of pharmacy benefit managers. Without action taken by the legislature to address this issue, costs will continue to go unfettered. S.B. 2402 reduces the cost of prescription drugs for taxpayers, employers, and consumers through the establishment of the Texas Pharmaceutical Initiative (initiative).

Through the initiative, the bill provides for the establishment of a statewide pharmacy benefit manager focused on price transparency and providing savings, not only to the state, but ultimately passed along to consumers. The initiative is governed by a nine-member board, administratively attached to the Health and Human Services Commission, consisting of relevant state agency executives and leadership appointees with applicable experience in the field. The board is authorized to hire a chief executive officer and any necessary staff in order to implement the legislation.

Under the leadership of the initiative, Texas will develop manufacturing partnerships to produce and distribute both generic and specialty prescription drugs, making essential medications affordable and accessible to more patients. To further bolster these efforts, the legislation allows for the initiative to invest in the provision of healthcare cost and claims analytic services to support each of its important functions.

Finally, S.B. 2402 creates the Texas Pharmaceutical Initiative Fund in order to secure public and private resources to bring this project to fruition and provide ongoing financial support.

S.B. 2402 represents the state reining in a powerful market and promoting access to affordable healthcare for our residents through our trademark innovative efforts.

As proposed, S.B. 2402 amends current law relating to the creation, management, and administration of the Texas Pharmaceutical Initiative.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the governing board of the Texas Pharmaceutical Initiative in SECTION 1 (Section 2177.004, Government Code).

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle D, Title 10, Government Code, by adding Chapter 2177, as follows:

CHAPTER 2177. TEXAS PHARMACEUTICAL INITIATIVE

Sec. 2177.001. DEFINITIONS. Defines "initiative" and "board."

Sec. 2177.002. TEXAS PHARMACEUTICAL INITIATIVE; ESTABLISHMENT. Provides that the Texas Pharmaceutical Initiative (initiative) is established to provide cost effective prescription drug access for employees, dependents, and retirees of public

higher education systems and institutions, Employees Retirement System of Texas (ERS) members, Teacher Retirement System of Texas (TRS) members, persons confined by the Texas Department of Criminal Justice (TDCJ) or the Texas Juvenile Justice Department (TJJD), recipients of medical assistance, enrollees of the child health plan program, and other public, non-profit, and for-profit entities.

Sec. 2177.003. GOVERNING BOARD. (a) Requires that the initiative be governed by a board that consists of:

- (1) the commissioner of the Health and Human Services Commission (commissioner; HHSC), or their designee;
- (2) the executive director of ERS, or their designee;
- (3) the executive director of TRS, or their designee;
- (4) three members appointed by the governor;
- (5) one member appointed by the governor from a list of three names submitted by the lieutenant governor;
- (6) one member appointed by the governor from a list of three names submitted by the speaker of the house of representatives; and
- (7) the chancellor of The University of Texas System, or the chancellor's designee, in an ex-officio capacity.

(b) Requires that a vacancy on the board be filled in the same manner as the original appointment.

(c) Provides that the board is administratively attached to HHSC.

(d) Requires the governor to select the presiding officer of the board.

Sec. 2177.004. GENERAL DUTIES. (a) Requires the board established under Section 2177.003 to:

- (1) develop and implement the initiative and related programs established in this chapter;
- (2) establish procedures and policies for the administration of the board;
- (3) establish procedures to document compliance by board members and staff with applicable laws governing conflicts of interest; and
- (4) adopt all necessary rules to implement this chapter.

(b) Authorizes the board to:

- (1) execute all contracts and other documents, adopt all proceedings, and conduct all activities determined by the board to be necessary to carry out the purposes of this chapter. Authorizes the board to authorize one or more members of the board to execute contracts and other documents on behalf of the board; and
- (2) establish and create any committees or other entities the board may deem necessary to exercise the powers provided in this act. Authorizes the board to delegate to such committees or other entities administrative duties and other powers as the board may deem necessary;

(3) hire a chief executive officer and employ necessary staff to provide administrative support;

(4) make grants to provide funds to public or private persons to implement the initiative.

(c) Requires the board to implement a provision of this chapter only if the legislature appropriates money specifically for that purpose. Authorizes, but does not require, the board, if the legislature does not appropriate money specifically for that purpose, to implement a provision of this chapter.

Sec. 2177.005. TRANSPARENT PHARMACY BENEFIT MANAGER. (a) Requires the board to establish and implement a statewide transparent pharmacy benefit manager to provide cost-effective prescription drugs to entities and organizations served by the initiative.

(b) Requires the pharmacy benefit manager to provide pricing transparency, pass-through of all rebates and fees, and fair and equitable pricing to any pharmacy that chooses to participate in the pharmacy benefit manager's pharmacy network.

(c) Requires the pharmacy benefit manager to contract with appropriate entities to:

(1) provide evidence-based benefit design, prior authorization, and new drug review; and

(2) partner with suppliers, pharmaceutical manufacturers, and group purchasing organizations for competitive drug acquisition.

(d) Authorizes the pharmacy benefit manager to charge fees for startup, enrollment, and ongoing management to support operational costs, program development, and expansion.

Sec. 2177.006. CENTRAL SERVICE CENTER AND SATELLITE DISTRIBUTION FACILITIES. (a) Requires the board to establish and implement a central service center and associated network of satellite distribution facilities to provide pharmacy and medical supplies in support of Texas public higher education systems and institutions, ERS, TRS, TDCJ, TJJJ, and other public, non-profit, and for-profit entities. Requires that the center:

(1) be constructed to withstand severe weather, natural disasters, and power outages, and be capable of supporting disaster preparedness and relief statewide; and

(2) include a mail order pharmacy and specialty pharmacy.

(b) Authorizes the center to assess a stock carrying charge, transaction fees, or other fees to support distribution and other operational costs, including overhead and margin.

(c) Authorizes the mail order and specialty pharmacy to receive payment for dispensing prescription drugs and to assess dispensing, delivery, and handling fees.

Sec. 2177.007. PHARMACEUTICAL ADVANCED PREPARATION FACILITY. (a) Requires the board to establish a pharmaceutical advanced preparation facility to provide Food and Drug Administration approved 503B compounding, manufacturing, CAR-T and other gene therapies, precision medicine, and advanced labs for quality control, preparation and compounding in support of innovative therapeutics and drug research.

(b) Requires the facility to be operated by a 501c(3) established by the board.

(c) Authorizes the facility to charge fees for drug preparation, manufacturing, CAR-T, gene therapy, and 503B compounding to support operational costs, including overhead and margin.

Sec. 2177.008. ADVANCED HEALTH CARE COST AND CLAIMS ANALYTIC SERVICES. (a) Requires the board to contract to provide advanced health care cost and claims analytic services to support the transparent pharmacy benefit manager, mail order and specialty pharmacies, central service center, and pharmaceutical advanced preparation facility established in this chapter, and to support population health and research.

Sec. 2177.009. GENERIC DRUG MANUFACTURING FACILITY. (a) Authorizes the board to enter into an agreement to establish a facility providing for the manufacturing of generic drugs. Requires the board, in entering into an agreement, to prioritize savings and access to affordable medications.

Sec. 2177.010. TEXAS PHARMACY INITIATIVE FUND. (a) Creates the Texas Pharmaceutical Initiative Fund (fund) as a trust fund outside the treasury with the Comptroller of Public Accounts of the State of Texas (comptroller). Provides that the fund consists of money from:

- (1) gifts, grants, or donations to the executive committee; and
- (2) any other source appropriated or designated by the legislature.

(b) Authorizes the board to utilize the fund for the purpose of carrying out this chapter.

(c) Requires the board to develop procedures for administration and approval of expenditures through the fund.

Sec. 2177.011. GIFTS, GRANTS, AND DONATIONS. Authorizes the board to accept on behalf of the initiative gifts, grants, or donations from any public or private source for the purpose of carrying out this chapter.

Sec. 2177.012. ANNUAL REPORT. Requires the board, not later than December 31 of each year, to submit to the Texas Legislature a written report that outlines:

- (1) the activities and objectives of the initiative;
- (2) cost savings derived by state entities as a result of participation in the initiative; and
- (3) any legislative recommendations.

SECTION 2. Effective date: upon passage or September 1, 2023.