AN ACT

relating to prescription drug benefits under Medicaid and the child health plan program.

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

SECTION 1. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.0691 to read as follows:

Sec. 531.0691. VENDOR DRUG PROGRAM INCLUSION. (a) The commission shall ensure that the vendor drug program includes all drugs and national drug codes made available under the federal Medicaid Drug Rebate Program if a certificate of information form to request the drug's inclusion in the vendor drug program has been submitted to the commission and:

(1) approved by the commission; or

(2) subject to Subsection (b), is pending review by the commission.

(b) On receipt of a certificate of information form to request the addition to the Texas Drug Code Index of a drug that is available under the federal Medicaid Drug Rebate Program, the commission shall, if the commission determines that the drug is appropriate for dispensing through an outpatient pharmacy, provisionally make the drug available under the vendor drug program for a period that expires on the earlier of:

(1) the 90th day after the date the form was submitted; or

(2) the date the commission makes a determination regarding whether to approve or deny the drug's inclusion on the vendor drug program formulary.

(c) The commission shall:

(1) denote the provisional availability of a drug under this section; and

(2) remove a drug made provisionally available under the vendor drug program:

(A) on the expiration of the 90-day period prescribed by Subsection (b)(1); or

(B) if applicable, on the date the commission denies the drug's inclusion on the vendor drug program formulary.

SECTION 2. Chapter 533, Government Code, is amended by adding Subchapter C to read as follows:

SUBCHAPTER C. PRESCRIPTION DRUG BENEFITS UNDER CERTAIN OUTPATIENT PHARMACY BENEFIT PLANS

Sec. 533.071. PREFERRED DRUG LIST EXCEPTIONS. (a) The commission shall adopt rules allowing exceptions to the preferred drug list if:

(1) the drug required under the preferred drug list:

(A) is contraindicated;

(B) will likely cause an adverse reaction in or physical or mental harm to the recipient; or

(C) is expected to be ineffective based on the known clinical characteristics of the recipient and the known characteristics of the prescription drug regimen;

(2) the recipient previously discontinued taking the

preferred drug at any point in the recipient's clinical history and for any length of time because the drug:

(A) was not effective;

(B) had a diminished effect; or

(C) resulted in an adverse event;

(3) the recipient was prescribed and is taking a nonpreferred drug in the antidepressant or antipsychotic drug class and the recipient:

(A) was prescribed the nonpreferred drug before being discharged from an inpatient facility;

(B) is stable on the nonpreferred drug; and

(C) is at risk of experiencing complications from switching from the nonpreferred drug to another drug; or

(4) the preferred drug is not available for reasons outside of the Medicaid managed care organization's control, including because:

(A) the drug is in short supply according to the Food and Drug Administration Drug Shortages Database; or

(B) the drug's manufacturer has placed the drug on backorder or allocation.

(b) An exception provided under this section does not subject the Medicaid managed care plan to liquidated damages for failing to comply with the preferred drug list.

SECTION 3. Section 531.072, Government Code, is amended by adding Subsections (b-3), (g), and (h) to read as follows:

(b-3) Notwithstanding Subsection (b), the preferred drug lists must contain all therapeutic equivalents for a generic drug

on the preferred drug list.

(g) The commission shall develop an expedited review process to consider requests from managed care organizations and providers to add drugs to the preferred drug list.

(h) The commission shall grant temporary non-preferred status to new drugs that are available but have not yet been reviewed by the drug utilization review board and establish criteria for authorizing drugs with temporary non-preferred status.

SECTION 4. Section 531.073(b), Government Code, is amended to read as follows:

(b) The commission shall establish procedures for the prior authorization requirement under the Medicaid vendor drug program to ensure that the requirements of 42 U.S.C. Section 1396r-8(d)(5) and its subsequent amendments are met. Specifically, the procedures must ensure that:

(1) [~~a prior authorization requirement is not imposed for a drug before the drug has been considered at a meeting of the Drug Utilization Review Board under Section 531.0736~~;

[~~(2)~~] there will be a response to a request for prior authorization by telephone or other telecommunications device within 24 hours after receipt of a request for prior authorization; and

(2) [~~(3)~~] a 72-hour supply of the drug prescribed will be provided in an emergency or if the commission does not provide a response within the time required by Subdivision (1) [~~(2)~~].

SECTION 5. Sections 531.0736(c) and (d), Government Code,

are amended to read as follows:

(c) The executive commissioner shall determine the composition of the board, which must:

(1) comply with applicable federal law, including 42 C.F.R. Section 456.716;

(2) include three [~~two~~] representatives of managed care organizations [~~as nonvoting members~~], all [~~one~~] of whom must be physicians or pharmacists [~~a physician and one of whom must be a pharmacist~~];

(3) include at least 17 physicians and pharmacists who:

(A) provide services across the entire population of Medicaid recipients and represent different specialties, including at least one of each of the following types of physicians:

(i) a pediatrician;

(ii) a primary care physician;

(iii) an obstetrician and gynecologist;

(iv) a child and adolescent psychiatrist; and

(v) an adult psychiatrist; and

(B) have experience in either developing or practicing under a preferred drug list; and

(4) include a consumer advocate who represents Medicaid recipients.

(d) Notwithstanding any other law, members [~~Members~~] appointed under Subsection (c)(2) may attend quarterly and other

regularly scheduled meetings, but may not:

(1) attend portions of the executive sessions in which confidential drug pricing information is shared; or

(2) access confidential drug pricing information.

SECTION 6. If before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION 7. This Act takes effect September 1, 2023.

President of the Senate

Speaker of the House

I certify that H.B. No. 3286 was passed by the House on May 5, 2023, by the following vote: Yeas 142, Nays 0, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 3286 on May 25, 2023, by the following vote: Yeas 139, Nays 0, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 3286 was passed by the Senate, with amendments, on May 21, 2023, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

_____

Governor