

SENATE AMENDMENTS

2nd Printing

By: Klick, et al.

H.B. No. 3286

A BILL TO BE ENTITLED

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. The commission shall ensure that the vendor drug program includes all drugs and national drug codes made available on the federal Medicaid Drug Rebate Program regardless of the status of the certification of information for the drug.

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

1 characteristics of the prescription drug regimen;

2 (2) the recipient previously discontinued taking the
3 preferred drug at any point in the recipient's clinical history and
4 for any length of time because the drug:

5 (A) was not effective;

6 (B) had a diminished effect; or

7 (C) resulted in an adverse event;

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

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

13 (B) is stable on the nonpreferred drug; and

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (2) ~~[(3)]~~ a 72-hour supply of the drug prescribed will
27 be provided in an emergency or if the commission does not provide a

1 response within the time required by Subdivision (1) [~~(2)~~].

2 SECTION 5. Sections 531.0736(c) and (d), Government Code,
3 are amended to read as follows:

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

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

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

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

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

- 18 (i) a pediatrician;
19 (ii) a primary care physician;
20 (iii) an obstetrician and gynecologist;
21 (iv) a child and adolescent psychiatrist;

22 and

- 23 (v) an adult psychiatrist; and

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

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

1 (d) Notwithstanding any other law, members ~~[Members]~~
2 appointed under Subsection (c)(2) may attend quarterly and other
3 regularly scheduled meetings, but may not:

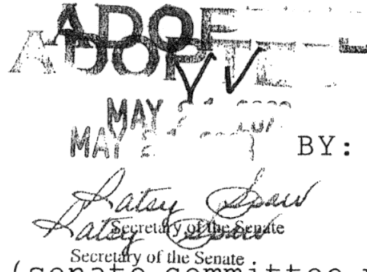
4 (1) attend portions of the executive sessions in which
5 confidential drug pricing information is shared; or

6 (2) access confidential drug pricing information.

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

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

FLOOR AMENDMENT NO. 1



BY: _____

Amend H.B. No. 3286 (senate committee report) in SECTION 1 of the bill, by striking added Section 531.0691, Government Code (page 1, lines 25 through 29), and substituting the following:

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:

1 (A) on the expiration of the 90-day period
2 prescribed by Subsection (b)(1); or
3 (B) if applicable, on the date the commission
4 denies the drug's inclusion on the vendor drug program formulary.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION

May 23, 2023

TO: Honorable Dade Phelan, Speaker of the House, House of Representatives

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB3286 by Klick (Relating to prescription drug benefits under Medicaid and the child health plan program.), **As Passed 2nd House**

The fiscal implications of the bill cannot be determined due to the uncertainty regarding the number of clients who would shift to non-preferred drugs as a result of exceptions to the preferred drug list.

The bill would require the Health and Human Services Commission (HHSC) to ensure that the vendor drug program includes all drugs and national drug codes made available on the federal Medicaid Drug Rebate Program, if approved by the commission or pending review.

The bill would establish exceptions to the preferred drug list adhered to by the Medicaid and child health plan programs. According to the Health and Human Services Commission, the bill could result in a reduction of federal and supplemental rebates due to a shift towards higher net cost non-preferred drugs. However, due to a lack of information regarding the effects on utilization, the fiscal impact cannot be determined at this time.

HHSC estimates that one additional full-time equivalent would be necessary to provide program support and technology updates would be required to implement the provisions of the bill.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 529 Health and Human Services Commission

LBB Staff: JMc, NPe, ER, CST

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION

May 15, 2023

TO: Honorable Lois W. Kolkhorst, Chair, Senate Committee on Health & Human Services

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB3286 by Klick (Relating to prescription drug benefits under Medicaid and the child health plan program.), **As Engrossed**

The fiscal implications of the bill cannot be determined due to the uncertainty regarding the number of clients who would shift to non-preferred drugs as a result of exceptions to the preferred drug list.

The bill would require the Health and Human Services Commission (HHSC) to ensure that the vendor drug program includes all drugs and national drug codes made available on the federal Medicaid Drug Rebate Program.

The bill would establish exceptions to the preferred drug list adhered to by the Medicaid and child health plan programs. According to the Health and Human Services Commission, the bill could result in a reduction of federal and supplemental rebates due to a shift towards higher net cost non-preferred drugs. However, due to a lack of information regarding the effects on utilization, the fiscal impact cannot be determined at this time.

HHSC estimates that one additional full-time equivalent would be necessary to provide program support and technology updates would be required to implement the provisions of the bill.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 529 Health and Human Services Commission

LBB Staff: JMc, NPe, ER, CST

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION

April 28, 2023

TO: Honorable Sam Harless, Chair, House Committee on Health Care Reform, Select

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: **HB3286** by Klick (relating to certain prescription drug benefits under the Medicaid managed care program.), **Committee Report 1st House, Substituted**

<p>The fiscal implications of the bill cannot be determined due to the uncertainty regarding the number of clients who would shift to non-preferred drugs as a result of exceptions to the preferred drug list.</p>

The bill would establish exceptions to the preferred drug list adhered to by Medicaid managed care organizations. According to the Health and Human Services Commission, the bill could result in a reduction of federal and supplemental rebates due to a shift towards higher net cost non-preferred drugs. However, due to a lack of information regarding the effects on utilization, the fiscal impact cannot be determined at this time.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 529 Health and Human Services Commission

LBB Staff: JMc, NPe, ER, CST

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION

Revision 1

April 5, 2023

TO: Honorable Sam Harless, Chair, House Committee on Health Care Reform, Select

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB3286 by Klick (Relating to certain prescription drug benefits under the Medicaid managed care program.), **As Introduced**

The fiscal implications of the bill cannot be determined due to the uncertainty regarding the number of clients that would shift to non-preferred drugs as a result of exceptions to step therapy protocol.

The bill would establish a process for requesting exceptions to step therapy protocol for recipients in a managed care plan. According to the Health and Human Services Commission, the bill could result in a reduction of federal and supplemental rebates due to a shift towards higher net cost non-preferred drugs. However, due to a lack of information regarding the effects on utilization, the fiscal impact cannot be determined at this time.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 529 Health and Human Services Commission

LBB Staff: JMc, NPe, ER, CST

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION

April 3, 2023

TO: Honorable Sam Harless, Chair, House Committee on Health Care Reform, Select

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB3286 by Klick (Relating to certain prescription drug benefits under the Medicaid managed care program.), **As Introduced**

The fiscal implications of the bill cannot be determined due to the uncertainty regarding the number of clients that would shift to non-preferred drugs as a result of step therapy protocol.

The bill would define and apply step therapy protocol for outpatient pharmacy benefit plans, and would require a client to use prescription drugs other than those recommended by their physician, before a Medicaid managed care organization provides coverage for the drug, with certain exceptions. According to the Health and Human Services Commission, the bill could result in a reduction of federal and supplemental rebates due to a shift towards higher net cost non-preferred drugs. However, due to a lack of information regarding the effects on utilization, the fiscal impact cannot be determined at this time.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 529 Health and Human Services Commission

LBB Staff: JMc, NPe, ER, CST