

House Bill 4990
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SECTION 1. Subtitle D, Title 10, Government Code, is amended by adding Chapter 2177 to read as follows:

CHAPTER 2177. TEXAS PHARMACEUTICAL INITIATIVE

Sec. 2177.001. DEFINITIONS. In this chapter:

(1) "Board" means the governing board of the initiative.

(2) "Fund" means the Texas Pharmaceutical Initiative fund.

(3) "Generic biological product" means a biological product approved pursuant to an application under Section 351(k), Public Health Service Act (42 U.S.C. Section 262(k)).

(4) "Generic drug" means a prescription drug approved pursuant to an application under Section 505(j), Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 355(j)).

(5) "Initiative" means the Texas Pharmaceutical Initiative established under this chapter.

Sec. 2177.002. TEXAS PHARMACEUTICAL INITIATIVE. (a) The Texas Pharmaceutical Initiative is established to provide cost-effective access to prescription drugs and other medical supplies for:

(1) employees, dependents, and retirees of public higher education systems and institutions;

(2) Employees Retirement System of Texas members;

(3) Teacher Retirement System of Texas members;

(4) persons confined by the Texas Department of Criminal Justice or the Texas Juvenile Justice Department;

SENATE VERSION (IE)

(Unless otherwise indicated, all SECTIONS below are from FA1)

SECTION 1. Subtitle D, Title 10, Government Code, is amended by adding Chapter 2177 to read as follows:

CHAPTER 2177. TEXAS PHARMACEUTICAL INITIATIVE

Sec. 2177.001. DEFINITIONS. In this chapter:

(1) "Advisory council" means the Texas Pharmaceutical Initiative Advisory Council established under this chapter.

(2) "Board" means the governing board of the initiative.

(3) "Commission" means the Health and Human Services Commission.

(4) "Generic biological product" means a biological product approved pursuant to an application under Section 351(k), Public Health Service Act (42 U.S.C. Section 262(k)).

(5) "Generic drug" means a prescription drug approved pursuant to an application under Section 505(j), Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 355(j)).

(6) "Initiative" means the Texas Pharmaceutical Initiative established under this chapter.

Sec. 2177.002. TEXAS PHARMACEUTICAL INITIATIVE. The Texas Pharmaceutical Initiative is established to provide cost-effective access to prescription drugs and other medical supplies for:

(1) employees, dependents, and retirees of public higher education systems and institutions;

(2) Employees Retirement System of Texas members;

(3) Teacher Retirement System of Texas members;

(4) persons confined by the Texas Department of Criminal Justice or the Texas Juvenile Justice Department; and

CONFERENCE

House Bill 4990
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

(5) recipients of medical assistance under Chapter 32, Human Resources Code; and

(6) enrollees of the child health plan program under Chapter 62, Health and Safety Code.

(b) A state entity or managed care organization as defined by Chapter 533, Government Code, that provides health benefit plan coverage to individuals described by Subsection

(a) as the entity or managed care organization determines appropriate may elect to provide access to prescription drugs and other medical supplies under the initiative.

Sec. 2177.003. BOARD. (a) The initiative is governed by a board composed of:

(1) the executive commissioner of the Health and Human Services Commission or the executive commissioner's designee;

(2) the executive director of the Employees Retirement System of Texas or the executive director's designee;

(3) the executive director of the Teacher Retirement System of Texas or the executive director's 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, who serves in an ex-officio capacity.

(b) A vacancy on the board shall be filled in the same manner as the original appointment.

SENATE VERSION (IE)

(Unless otherwise indicated, all SECTIONS below are from FA1)

(5) individuals served by a program operated or administered by the health and human services system, as that term is defined by Section 531.001.

Sec. 2177.003. BOARD. (a) The initiative is governed by a board composed of three members appointed by the governor.

CONFERENCE

House Bill 4990
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

(c) The appointed board members serve staggered six-year terms.

(d) The governor shall designate the presiding officer of the board.

(e) A board member serves without compensation but may be reimbursed for travel and other actual and reasonable expenses incurred in the performance of the member's duties on the board.

(f) The board is administratively attached to the Health and Human Services Commission.

No equivalent provision.

Sec. 2177.004. DUTIES OF BOARD. (a) The board shall:

(1) develop and implement the initiative and related programs established by this chapter;

(2) establish procedures and policies for the administration of the initiative;

(3) establish procedures to document compliance by board members and personnel with applicable laws governing conflicts of interest;

SENATE VERSION (IE)

(Unless otherwise indicated, all SECTIONS below are from FA1)

(b) The governor shall designate the presiding officer of the board.

(c) A board member serves without compensation but may be reimbursed for travel and other actual and reasonable expenses incurred in the performance of the member's duties on the board.

(See Sec. 2177.007 below.)

Sec. 2177.004. BOARD MEMBER QUALIFICATIONS.

(a) A person may not serve as a board member if the person:

(1) has held any other elective public office during the preceding five years; or

(2) is an employee of an entity served by the initiative.

(b) Not more than one-third of the members of the board serving at any one time may derive more than 10 percent of their annual income from the health care, insurance, or pharmaceutical industry.

Sec. 2177.005. BOARD POWERS AND DUTIES. (a) The board may:

(1) develop and implement the initiative and any programs established by this chapter;

(2) establish procedures and policies for the administration of the initiative; and

(3) establish procedures to document compliance by board members and personnel with applicable laws governing conflicts of interest.

CONFERENCE

House Bill 4990
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

(4) ensure that a program or entity created under this chapter meets any applicable licensing or accreditation requirements under state or federal law; and

(5) recommend rules necessary to implement this chapter for adoption by the executive commissioner of the Health and Human Services Commission.

(b) To carry out the purposes of this chapter the board may:

(1) execute contracts and other instruments and conduct all activities the board determines necessary for those purposes;

(2) authorize one or more board members to execute contracts and other instruments on behalf of the board;

(3) establish a committee or other similar entity to exercise powers delegated by the board and exercise any other administrative duties or powers as the board considers necessary;

(4) employ an executive director and necessary personnel to provide administrative support; and

(5) award grants to public or private persons to implement the initiative.

(c) The board may refrain from establishing a program or entity under this chapter if the board determines that establishment is not feasible with current resources or considering other state-funded programs.

(d) A contract or agreement executed under this chapter must comply with Chapter 2254, if applicable.

No equivalent provision.

SENATE VERSION (IE)

(Unless otherwise indicated, all SECTIONS below are from FA1)

(b) To carry out the purposes of this chapter and implement the initiative, the board may:

(2) execute contracts and other instruments and conduct all activities the board determines necessary for those purposes;

(3) authorize one or more board members to execute contracts and other instruments on behalf of the board; and

(4) establish a committee or other similar entity to exercise powers delegated by the board and exercise any other administrative duties or powers as the board considers necessary.

(1) hire and employ an executive director and necessary personnel to provide administrative support;

Sec. 2177.006. BUSINESS PLAN. Not later than October 1, 2024, the board shall develop and submit to the governor, the legislature, and the Legislative Budget Board a business plan on:

CONFERENCE

House Bill 4990
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

(Unless otherwise indicated, all SECTIONS below are from FA1)

(1) implementing the initiative, including the initiative's organizational structure and related programs;

(2) establishing procedures and policies for the administration of the initiative, including documenting the process and resources required for the provision to individuals described by Section 2177.002 of the following services:

(A) establishing or contracting for statewide pharmacy benefit manager services;

(B) establishing policies and conditions to operate or contract for the operation of a distribution network, central service center, and associated network of satellite distribution facilities to distribute prescription drugs and related medical supplies; and

(C) providing advanced pharmaceutical preparation and related services, including:

(i) manufacturing generic drugs and generic biological products;

(ii) providing gene therapies and precision medicine; and

(iii) providing advanced laboratories for quality control, preparation, and compounding of drugs in support of innovative therapeutics and drug research;

(3) establishing procedures to document compliance by board members and personnel with applicable laws governing conflicts of interest;

(4) establishing the conditions for state agencies that facilitate health plans to participate in the initiative;

(5) identifying potential cost savings from implementation of the initiative;

(6) identifying the funding and resources needed to implement this chapter; and

(See Sec. 2177.005 below.)

(See Sec. 2177.006 below.)

(See Secs. 2177.007 and 2177.009 below.)

House Bill 4990
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

(See Sec. 2177.003(f) above.)

No equivalent provision.

No equivalent provision.

Sec. 2177.005. PHARMACY BENEFIT MANAGER. (a) The board shall contract for a statewide pharmacy benefit

SENATE VERSION (IE)

(Unless otherwise indicated, all SECTIONS below are from FA1)

(7) providing other board recommendations, with supporting documentation, on continuation of the initiative.

Sec. 2177.007. ADMINISTRATIVE ATTACHMENT. (a) The board is administratively attached to the commission. (b) The commission shall provide administrative support services to the board as necessary to carry out the purposes of this chapter.

Sec. 2177.008. ADVISORY COUNCIL. (a) The Texas Pharmaceutical Initiative Advisory Council is established to advise the board in implementing this chapter and carrying out the duties imposed on the board under this chapter. (b) The advisory council is composed of:
(1) the executive commissioner of the commission or the executive commissioner's designee;
(2) the executive director of the Employees Retirement System of Texas or the executive director's designee;
(3) the executive director of the Teacher Retirement System of Texas or the executive director's designee;
(4) the chancellor of The University of Texas System or the chancellor's designee; and
(5) the chancellor of The Texas A&M University System or the chancellor's designee.

Sec. 2177.009. CONFLICTS OF INTEREST. Except as otherwise provided by this chapter, Chapter 572 applies to the initiative.

No equivalent provision. *(But see Sec. 2177.006 (2)(A) above.)*

CONFERENCE

House Bill 4990
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)
(Unless otherwise indicated, all SECTIONS below are from FA1)

CONFERENCE

manager, as provided by Subchapter H, Chapter 2158, to provide cost-effective prescription drugs through the establishment of a pharmacy network to state entities served by the initiative.

(b) The pharmacy benefit manager shall provide pricing transparency, a pass-through of all rebates and fees, and fair and equitable pricing to a pharmacy that participates in the pharmacy benefit manager's pharmacy network.

(c) The pharmacy benefit manager shall contract with appropriate persons to:

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

(2) partner with suppliers, pharmaceutical manufacturers, and group purchasing organizations for competitive acquisition of prescription drugs and medical supplies.

Sec. 2177.006. DISTRIBUTION OF PRESCRIPTION DRUGS AND MEDICAL SUPPLIES. (a) The board shall establish and implement a central service center and an associated network of satellite distribution facilities to provide prescription drugs and medical supplies to individuals described by Section 2177.002 for state entities that elect to participate in the initiative. The center must:

(1) be constructed to withstand extreme weather conditions, natural disasters, and power outages;

(2) be capable of providing disaster preparedness and response resources statewide; and

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

(b) The central service center may assess an inventory storage charge, transaction fees, or other fees on persons obtaining prescription drugs and medical supplies from the

No equivalent provision. *(But see Sec. 2177.006 (2)(B) above.)*

House Bill 4990
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)
(Unless otherwise indicated, all SECTIONS below are from FA1)

CONFERENCE

center to support the center's distribution and other operational costs, including overhead and margin.

(c) The mail order and specialty pharmacy established in the central service center may assess delivery and handling fees on persons receiving prescription drugs from the pharmacy.

Sec. 2177.007. PHARMACEUTICAL ADVANCED PREPARATION FACILITY. (a) The board shall establish a pharmaceutical advanced preparation facility to serve as an outsourcing facility in compliance with Section 503B, Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 353b), to:

- (1) manufacture and provide compounded drugs;
- (2) provide chimeric antigen receptor T-cell treatment and other gene therapies, including precision medicine; and
- (3) provide advanced laboratories for quality control, preparation, and compounding of drugs in support of innovative therapeutics and drug research.

(b) The pharmaceutical advanced preparation facility shall be operated by an organization established by the board that is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed as an exempt entity under Section 501(c)(3) of that code.

(c) The pharmaceutical advanced preparation facility may charge fees to persons to whom the facility provides drugs, treatment, supplies, or other services to support the operational costs of the facility, including overhead and margin.

Sec. 2177.008. ADVANCED HEALTH CARE COST AND CLAIMS ANALYTIC SERVICES. (a) The board shall

No equivalent provision. *(But see Sec. 2177.006 (2)(C) above.)*

No equivalent provision.

House Bill 4990
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)
(Unless otherwise indicated, all SECTIONS below are from FA1)

CONFERENCE

contract with a person to provide advanced health care claims analytics software to support the programs and entities created by this chapter and to support population health research.

(b) The board shall develop criteria for the evaluation of applications or proposals submitted by a person seeking to contract with the board under this section.

Sec. 2177.009. GENERIC BIOLOGICAL PRODUCT AND GENERIC DRUG MANUFACTURING FACILITY.

(a) The board may enter into an agreement with a person to establish a facility that manufactures generic biological products and generic drugs in compliance with any requirements of the federal Food and Drug Administration. In entering into the agreement, the board shall prioritize savings and access to affordable medications.

(b) The board shall develop criteria for the evaluation of applications or proposals submitted by a person seeking to contract with the board under this section.

Sec. 2177.010. CONFIDENTIALITY OF CERTAIN INFORMATION. Any information received by the board, a program or entity created by this chapter, a state entity participating in the initiative, or a contractor or agent of the board that if directly or indirectly disclosed is likely to compromise the financial, competitive, or proprietary nature of the information, is confidential and not subject to disclosure under Chapter 552.

Sec. 2177.011. TEXAS PHARMACEUTICAL INITIATIVE FUND. (a) The Texas Pharmaceutical

No equivalent provision. *(But see Sec. 2177.006 (2)(C) above.)*

No equivalent provision.

No equivalent provision.

House Bill 4990
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)
(Unless otherwise indicated, all SECTIONS below are from FA1)

CONFERENCE

Initiative fund is created as a trust fund to be held by the comptroller outside the state treasury.

(b) The fund consists of:

(1) money from gifts, grants, and donations to the fund;

(2) any additional legislative appropriations of money for the purposes of the fund; and

(3) interest, dividends, and other income of the fund.

(c) The board may only use money in the fund to carry out the purposes of this chapter.

(d) The board shall develop procedures for administration and approval of expenditures of the fund.

Sec. 2177.012. FUNDING. The board may accept gifts, grants, and donations from any public or private source for the purpose of carrying out this chapter.

No equivalent provision.

Sec. 2177.013. ANNUAL REPORT. Not later than December 31 of each year, the board shall submit to the legislature a written report on:

No equivalent provision.

(1) the activities and objectives of the initiative;

(2) any cost savings for state entities that participate in the initiative; and

(3) any recommendations for legislative or other action.

Sec. 2177.014. SUNSET PROVISION. The board and the initiative established under this chapter are subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board and the initiative are abolished and this chapter expires September 1, 2035.

Sec. 2177.010. EXPIRATION OF CHAPTER. This chapter expires September 1, 2025.

House Bill 4990
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2023.

SENATE VERSION (IE)

(Unless otherwise indicated, all SECTIONS below are from FA1)

SECTION 2. Same as House version.

CONFERENCE