LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 89TH LEGISLATIVE REGULAR SESSION

April 8, 2025

TO: Honorable Jay Dean, Chair, House Committee on Insurance

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: **HB3265** by Darby (Relating to discriminatory practices by a health benefit plan issuer, pharmacy benefit manager, and third-party payor and certain prescription drug manufacturers, distributors, and related persons with respect to certain entities participating in a federal drug discount program; providing a civil penalty.), **As Introduced**

The fiscal implications of this bill cannot be determined at this time for the Health and Human Services Commission (HHSC) and the University of Texas (UT) System as the necessary information to make appropriate assumptions for a specific estimate is not available.

General Revenue-Related Funds, Five- Year Impact:

Fiscal Year	**Probable Net Positive/(Negative) Impact to *General Revenue Related Funds***
2026	$0
2027	$0
2028	$0
2029	$0
2030	$0

All Funds, Five-Year Impact:

Fiscal Year	**Probable Revenue (Loss) from *HIV Rebates Account No. 8149* 8149**
2026	($15,091,236)
2027	($26,224,334)
2028	($37,357,432)
2029	($55,539,857)
2030	($55,539,857)

Fiscal Analysis

This bill amends the Health and Safety Code to prohibit discrimination by health benefit plan issuers, pharmacy benefit managers, third-party payors, and certain prescription drug manufacturers, distributors, and related persons participating in a federal drug discount program. This bill would amend the Insurance Code to impose certain prohibitions, restrictions, and requirements on health benefit plan issuers; pharmacy benefit managers; and third-party payors relating to the 340B Drug Pricing Program (340B). This bill would take effect September 1, 2025.

Methodology

The Department of State Health Services (DSHS) assumes that the Texas HIV Medication Program (THMP) in-network contract pharmacies, which currently do not use 340B stock, make up 20.5 percent of all prescription fills. According to the agency, the THMP would no longer be allowed to provide medications to these in-network contract pharmacies which would result in a loss of THMP rebates.

DSHS estimates that covered entity direct pharmacies made up 20.4 percent of all prescription fills in fiscal year 2024. According to the agency, THMP would no longer be allowed to provide medications to these covered entity direct pharmacies, which would result in a loss of THMP rebates.

DSHS estimates that the loss of rebate revenue would result in a loss of $15,091,236 in fiscal year 2026 and $26,224,334 in fiscal year 2027, all from Other Fund 8149, Vendor Drug Rebates, HIV Program. The agency indicates that this loss of revenue would reduce the amount for THMP and would make the program insolvent by fiscal year 2027. The table above reflects estimated revenue loss at DSHS.

HHSC is prohibited by federal law from duplicating discounts resulting from manufacturers providing a drug at a discounted 340B price and Medicaid collecting a drug rebate for the same drug. HHSC's Vendor Drug Program (VDP) currently uses codes and modifiers on outpatient drug and clinician administered drug claims to comply with federal law. The VDP requires the submission of these modifiers on all fee-for-service and managed care claims filled with 340B purchased drugs. Claims with these modifiers are excluded from the drug rebate system invoicing process and duplicate discounts are avoided. This approach allowed HHSC to collect revenue in drug rebates annually on non-340B drugs dispensed by covered entities. Without using a modifier then all claim submissions from the 340B provider will be considered 340B stock and not eligible for rebates. In addition, all pharmacy claims for covered entities would have to be reimbursed at the 340B price because federal law requires payment at no more than the 340B ceiling for 340B drugs.

Supposing non-340B drugs provided by covered entities could no longer be identified, in addition to no longer being able to collect rebates, HHSC would have to reimburse covered entities at the lower 340B cost. According to HHSC, at this time the agency is unable to determine the savings or the loss of revenue to the state related to the implementation of the provisions of this bill. Additionally, HHSC is unable to determine whether a covered entity would choose to stop providing non-340B drugs to avoid the lower reimbursement or continue to participate in the program.

According to the UT System, the implementation of the provisions of this bill could realize a significant increase in cost savings to the state; however, the exact amount cannot be determined at this time.

A violation of Section 431.416 of the Health and Safety Code, as provided by the bill, would be subject to a civil penalty not greater than $50,000 per package of 340B drugs, that is subject to the violation. The number of violations and associated penalty revenue cannot be determined.

This analysis assumes the Office of Court Administration, Office of the Attorney General, Teacher Retirement System, Employees Retirement System, Department of Insurance, Board of Pharmacy, Texas A&M University System Administration can implement provisions of this bill within existing agency resources.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 323 Teacher Retirement System, 327 Employees Retirement System, 454 Department of Insurance, 515 Board of Pharmacy, 529 Health and Human Services Commission, 537 State Health Services, Department of, 710 Texas A&M University System Administrative and General Offices, 720 The University of Texas System Administration

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