CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

5/25/09
Date

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on HB 2030 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Bob Deuell

Wendy Davis

Jane Nelson

Leticia Van de Putte

On the part of the Senate
Tommy Williams

John Zerwas

John Davis

Donna Howard

Chuck Hopson

On the part of the House
Susan King

Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

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CONFERENCE COMMITTEE REPORT

3rd Printing

H.B. No. 2030

A BILL TO BE ENTITLED

AN ACT

relating to the Medicaid Drug Utilization Review Program and prescription drug use under the Medicaid program.

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

SECTION 1. Subchapter B, Chapter 531, Government Code, is amended by adding Sections 531.0691, 531.0692, 531.0693, and 531.0694 to read as follows:

Sec. 531.0691. MEDICAID DRUG UTILIZATION REVIEW PROGRAM: DRUG USE REVIEWS AND ANNUAL REPORT. (a) In this section:

(1) "Medicaid Drug Utilization Review Program" means the program operated by the vendor drug program to improve the quality of pharmaceutical care under the Medicaid program.

(2) "Prospective drug use review" means the review of a patient's drug therapy and prescription drug order or medication order before dispensing or distributing a drug to the patient.

(3) "Retrospective drug use review" means the review of prescription drug claims data to identify patterns of prescribing.

(b) The commission shall provide for an increase in the number and types of retrospective drug use reviews performed each year under the Medicaid Drug Utilization Review Program, in comparison to the number and types of reviews performed in the state fiscal year ending August 31, 2009.

(c) In determining the number and types of drug use reviews

to be performed, the commission shall:

(1) allow for the repeat of retrospective drug use reviews that address ongoing drug therapy problems and that, in previous years, improved client outcomes and reduced Medicaid spending;

(2) consider implementing disease-specific retrospective drug use reviews that address ongoing drug therapy problems in this state and that reduced Medicaid prescription drug use expenditures in other states; and

(3) regularly examine Medicaid prescription drug claims data to identify occurrences of potential drug therapy problems that may be addressed by repeating successful retrospective drug use reviews performed in this state and other states.

(d) In addition to any other information required by federal law, the commission shall include the following information in the annual report regarding the Medicaid Drug Utilization Review Program:

(1) a detailed description of the program's activities; and

(2) estimates of cost savings anticipated to result from the program's performance of prospective and retrospective drug use reviews.

(e) The cost-saving estimates for prospective drug use reviews under Subsection (d) must include savings attributed to drug use reviews performed through the vendor drug program's electronic claims processing system and clinical edits screened

through the prior authorization system implemented under Section 531.073.

(f) The commission shall post the annual report regarding the Medicaid Drug Utilization Review Program on the commission's website.

Sec. 531.0692. MEDICAID DRUG UTILIZATION REVIEW BOARD: CONFLICTS OF INTEREST. (a) A member of the board of the Medicaid Drug Utilization Review Program may not have a contractual relationship, ownership interest, or other conflict of interest with a pharmaceutical manufacturer or labeler or with an entity engaged by the commission to assist in the administration of the Medicaid Drug Utilization Review Program.

(b) The executive commissioner may implement this section by adopting rules that identify prohibited relationships and conflicts or requiring the board to develop a conflict-of-interest policy that applies to the board.

Sec. 531.0693. PRESCRIPTION DRUG USE AND EXPENDITURE PATTERNS. (a) The commission shall monitor and analyze prescription drug use and expenditure patterns in the Medicaid program. The commission shall identify the therapeutic prescription drug classes and individual prescription drugs that are most often prescribed to patients or that represent the greatest expenditures.

(b) The commission shall post the data determined by the commission under Subsection (a) on the commission's website and update the information on a quarterly basis.

Sec. 531.0694. PERIOD OF VALIDITY FOR PRESCRIPTION. In its

rules and standards governing the vendor drug program, the commission, to the extent allowed by federal law and laws regulating the writing and dispensing of prescription medications, shall ensure that a prescription written by an authorized health care provider under the Medicaid program is valid for the lesser of the period for which the prescription is written or one year. This section does not apply to a prescription for a controlled substance, as defined by Chapter 481, Health and Safety Code.

SECTION 2. Section 531.071, Government Code, is amended by amending Subsection (c) and adding Subsection (d) to read as follows:

(c) General information about the aggregate costs of different classes of drugs is not confidential under Subsection (a), except that a drug name or information that could reveal a drug name is confidential.

(d) Information about whether the commission and a manufacturer or labeler reached or did not reach a supplemental rebate agreement under Section 531.070 for a particular drug is not confidential under Subsection (a).

SECTION 3. Section 531.072, Government Code, is amended by adding Subsections (b-1), (b-2), and (c-1) to read as follows:

(b-1) Notwithstanding Subsection (b), the preferred drug lists may contain:

(1) a drug provided by a manufacturer or labeler that has not reached a supplemental rebate agreement with the commission if the commission determines that inclusion of the drug on the preferred drug lists will have no negative cost impact to the state;

or

(2) a drug provided by a manufacturer or labeler that has reached an agreement with the commission to provide program benefits in lieu of supplemental rebates, as described by Section 531.070.

(b-2) Consideration must be given to including all strengths and dosage forms of a drug on the preferred drug lists.

(c-1) In addition to the considerations listed under Subsection (c), the commission shall consider the inclusion of multiple methods of delivery within each drug class, including liquid, tablet, capsule, and orally disintegrating tablets.

SECTION 4. Section 531.073, Government Code, is amended by adding Subsections (g), (h), and (i) to read as follows:

(g) The commission shall ensure that requests for prior authorization may be submitted by telephone, facsimile, or electronic communications through the Internet.

(h) The commission shall provide an automated process that may be used to assess a Medicaid recipient's medical and drug claim history to determine whether the recipient's medical condition satisfies the applicable criteria for dispensing a drug without an additional prior authorization request.

(i) The commission shall study the costs and benefits of the prior authorization process and methods to improve efficiency.

SECTION 5. Section 531.074, Government Code, is amended by amending Subsections (i) and (m) and adding Subsections (f-1) and (i-1) to read as follows:

(f-1) The committee shall meet in public and shall permit

public comment before voting on any changes in the preferred drug lists. Minutes of each meeting shall be made available to the public not later than the 10th business day after the date the minutes are approved. The committee may meet in executive session to discuss confidential information as described by Subsection (i).

(i) The commission shall adopt rules governing the operation of the committee, including rules governing the procedures used by the committee for providing notice of a meeting and rules prohibiting the committee from discussing confidential information described by Section 531.071 in a public meeting. The committee shall comply with the rules adopted under this subsection and Subsection (i-1).

(i-1) In addition to the rules under Subsection (i), the commission by rule shall require the committee or the committee's designee to present a summary of any clinical efficacy and safety information or analyses regarding a drug under consideration for a preferred drug list that is provided to the committee by a private entity that has contracted with the commission to provide the information. The committee or the committee's designee shall provide the summary in electronic form before the public meeting at which consideration of the drug occurs. Confidential information described by Section 531.071 must be omitted from the summary. The summary must be posted on the commission's Internet website.

(m) The commission or the commission's agent shall publicly disclose, immediately after the committee deliberations conclude, each specific drug recommended for or against preferred drug list status for each drug class included in the preferred drug list for

the Medicaid vendor drug program. The disclosure must be posted on the commission's Internet website not later than the 10th business day [~~made in writing~~] after the conclusion of committee deliberations that result in recommendations made to the executive commissioner regarding the placement of drugs on the preferred drug list. The public disclosure must include:

(1) the general basis for the recommendation for each drug class; and

(2) for each recommendation, whether a supplemental rebate agreement or a program benefit agreement was reached under Section 531.070.

SECTION 6. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.0741 to read as follows:

Sec. 531.0741. PUBLICATION OF INFORMATION REGARDING COMMISSION DECISIONS ON PREFERRED DRUG LIST PLACEMENT. The commission shall publish on the commission's Internet website any decisions on preferred drug list placement, including:

(1) a list of drugs reviewed and the commission's decision for or against placement on a preferred drug list of each drug reviewed;

(2) for each recommendation, whether a supplemental rebate agreement or a program benefit agreement was reached under Section 531.070; and

(3) the rationale for any departure from a recommendation of the pharmaceutical and therapeutics committee established under Section 531.074.

SECTION 7. Not later than December 1, 2010, the executive

commissioner of the Health and Human Services Commission shall implement Sections 531.073(g), (h), and (i), Government Code, as added by this Act.

SECTION 8. 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 9. This Act takes effect September 1, 2009.

House Bill 2030
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION	SENATE VERSION	CONFERENCE
SECTION 1. Adds Sections 531.0691, 531.0692, and 531.0693, Subchapter B, Chapter 531, Government Code, relating to the Medicaid Drug Utilization Review Program and prescription drug use and expenditure patterns.	SECTION 1. Same as House version except also adds Section 531.0694 to require the Health and Human Services Commission (HHSC) to ensure that a prescription written by a health care provider under the Medicaid program is valid for the lesser of the period for which the prescription is written or one year.	Same as Senate version.
No equivalent provision.	SECTION __. Amends Section 531.071(c) and adds Subsection (d), Government Code, to provide that, under provisions relating to confidentiality of information regarding drug rebates, pricing, and negotiations, a drug name or information that could reveal a drug name is confidential and information about whether HHSC and a manufacturer or labeler reached or did not reach a supplemental rebate agreement for a particular drug is not confidential.	SECTION 2. Same as Senate version.
No equivalent provision.	SECTION __. Adds Section 531.072(b-1), (b-2), and (c-1), Government Code, relating to preferred drug lists, as follows: (b-1) Authorizes the preferred drug lists to contain a drug provided by a manufacturer or labeler that has not reached a supplemental rebate agreement with HHSC if HHSC determines that inclusion of the drug on the preferred drug lists will have no negative cost impact to the state or a drug provided by a manufacturer or labeler that has reached an agreement with HHSC to provide program benefits in lieu of supplemental rebates. (b-2) Requires that consideration be given to including	SECTION 3. Same as Senate version.

HOUSE VERSION	SENATE VERSION	CONFERENCE
	all strengths and dosage forms of a drug on the preferred drug lists. (c-1) Requires HHSC to consider the inclusion of multiple methods of delivery within each drug class, including liquid, tablet, capsule, and orally disintegrating tablets.	
No equivalent provision.	SECTION __. Adds Section 531.073(g) and (h), Government Code, relating to prior authorization for certain prescription drugs, as follows: (g) Requires HHSC to ensure that requests for prior authorization are submitted by telephone, facsimile, or electronic communications through the internet. (h) Requires HHSC to provide an automated process that may be used to assess a Medicaid recipient's medical and drug claim history to determine whether the recipient's medical condition satisfies the applicable criteria for dispensing a drug without an additional prior authorization request.	SECTION 4. (part) Subsections (g) and (h) same as Senate version. See below for added Subsection (i).
No equivalent provision.	SECTION __. Requires the executive commissioner of HHSC, not later than December 1, 2010, to implement Subsections (g) and (h), Section 531.073, Government Code, as added by this Act.	SECTION 7. Same as Senate version.
No equivalent provision.	SECTION __. Adds Section 531.073(g), Government Code, to require HHSC to ***allow*** a physician to write a total of 24 prescriptions each year without obtaining prior authorization for drugs that would otherwise	SECTION 4. (part) Adds Section 531.073(i), Government Code, to require HHSC to ***study the costs and benefits of allowing*** a physician to write a total of 24 prescriptions each year without such prior

HOUSE VERSION	SENATE VERSION	CONFERENCE
	require that authorization and to ***provide*** reimbursement for those drugs under the Medicaid vendor drug program to the extent reimbursement would be provided if that authorization were obtained. Provides that the total number of prescriptions written for a single patient under this subsection may not exceed two per year.	authorization, not to exceed two prescriptions for a single patient, and to ***study the costs and benefits of providing*** such reimbursement.
No equivalent provision.	SECTION __. Amends Section 531.074(i) and (m) and adds Subsections (f-1) and (i-1), Government Code, relating to the Pharmaceutical and Therapeutics Committee, as follows: (f-1) Requires the committee to meet in public and allow public comment before voting on any changes in the preferred drug lists. Requires minutes of each meeting to be made available to the public not later than the 10th business day after the date the minutes are approved. Authorizes the committee to meet in executive session to discuss confidential information as described by Subsection (i). (i) Adds rules adopted under Subsection (i-1) to those with which the committee is required to comply. (i-1) Requires HHSC, by rule, to require the committee or the committee's designee to present a summary of any clinical efficacy and safety information or analyses regarding a drug under consideration for a preferred drug list that is provided to the committee by a private entity that has contracted with HHSC to provide the information. Requires the committee or the committee's designee to provide the summary in electronic form	SECTION 5. Same as Senate version.

HOUSE VERSION	SENATE VERSION	CONFERENCE
	before the public meeting at which consideration of the drug occurs. Requires that certain confidential information be omitted from the summary and that the summary be posted on HHSC's Internet website. (m) Requires HHSC or HHSC's agent to make its public disclosures of drugs recommended for or against preferred drug list status immediately after the committee deliberations conclude and requires the disclosures to be posted on HHSC's Internet website not later than the 10th business day, instead of made in writing, after the conclusion of committee deliberations that result in recommendations to the executive commissioner. Requires the public disclosure to include the general basis for the recommendation for each drug class and, for each recommendation, whether a supplemental rebate agreement or a program benefit agreement was reached.	
No equivalent provision.	SECTION __. Adds Section 531.0741, Government Code, relating to publication of information regarding commission decisions on preferred drug list placement. Requires HHSC to publish on HHSC's website any decisions on preferred drug list placement, including a list of drugs reviewed and HHSC's decision for or against each drug; for each recommendation, whether a supplemental rebate agreement or a program benefit agreement was reached; and the rationale for any departure from a recommendation of the pharmaceutical and therapeutics committee.	SECTION 6. Same as Senate version.

HOUSE VERSION	SENATE VERSION	CONFERENCE
SECTION 2. Procedural provision relating to a federal waiver or authorization.	Same as House version.	SECTION 8. Same as House version.
SECTION 3. Effective date.	Same as House version.	SECTION 9. Same as House version.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 25, 2009

TO: Honorable David Dewhurst, Lieutenant Governor, Senate
Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **HB2030** by Zerwas (Relating to the Medicaid Drug Utilization Review Program and prescription drug use under the Medicaid program.), **Conference Committee Report**

No significant fiscal implication to the State is anticipated.

As recommended in the Legislative Budget Board's 2009 *Government Effectiveness and Efficiency Report* entitled "Strengthen the Texas Medicaid Drug Utilization Review Program to Promote Safety and Contain Spending," the bill would amend Chapter 531 of the Government Code to require the Health and Human Services Commission (HHSC) to increase the number and type of retrospective drug use reviews performed each year under the Medicaid Drug Utilization Review (DUR) program. HHSC would be required to include a detailed description of Medicaid DUR program activities and cost savings estimates for retrospective and prospective reviews in the program's federally required annual report and to post the annual report on its website. The bill would require HHSC to monitor and analyze Medicaid prescription drug use and expenditure patterns and post certain data on its website. The bill prohibits Medicaid DUR board members from having a contractual relationship, ownership interest, or other conflict of interest with a pharmaceutical manufacturer or labeler or with an entity engaged by HHSC to assist with administering the Medicaid DUR program. HHSC would be allowed to adopt rules that identify prohibited relationships or require the Medicaid DUR board to develop a conflict of interest policy.

The bill would also require HHSC to ensure that prescriptions written under the Medicaid Program are valid for no more than one year.

The bill would amend Chapter 531 of the Government Code regarding information that is confidential with respect to the Medicaid Vendor Drug program's preferred drug list (PDL). The bill would allow the PDL to contain drugs for which no supplemental rebate agreement was reached if it would not have a negative cost impact to the state. It would require HHSC to consider including all strengths and dosages of a drug on the PDL, and to consider including multiple methods of delivery within each drug class, including liquid, tablet, capsule, and orally disintegrating tablet. The bill would require the commission to ensure that prior authorization requests may be submitted by telephone, facsimile, or electronic communications via the Internet. HHSC would provide an automated process to determine whether a drug may be dispensed without an additional prior authorization request. The bill would require HHSC to publish on the Internet specific non-confidential information regarding HHSC decisions concerning preferred drug list placement of individual drug products.

The bill would require HHSC to study the costs and benefits of the prior authorization process and methods to improve efficiency. It is assumed that these costs could be absorbed within current resources.

Implementing strategies to strengthen the Medicaid DUR program has the potential to improve the quality of pharmaceutical care and contain Medicaid prescription drug spending. HHSC currently contracts with an entity to perform retrospective drug use reviews. Per HHSC's contract with this entity, HHSC is guaranteed cost savings equal to twice the amount paid to the contracted entity for each retrospective drug use review performed. As a result, the implementation of additional

retrospective drug use reviews would be cost neutral. It is assumed that any cost to implement the provisions of the bill related to the annual report, analysis of prescription drug data, and the conflict of interest provision for the Medicaid DUR board would be minimal and can be absorbed within available resources.

Based on HHSC's analysis, any cost to implement provisions of the bill related to the period of validity for prescription drugs written under the Medicaid Program can be absorbed within available resources.

The requirement for the agency to consider including multiple dosages and methods of delivery is assumed to have no fiscal impact; it is assumed that the agency would not implement unless there was no signficant fiscal impact to do so. It is assumed that the automated process for certain drug dispensing without prior authorization would require system programming expenditures. The requirement to publish HHSC PDL decisions on the Internet would result in an increased amount of staff time and resources needed to post the detailed information requested. It is assumed that these costs could be absorbed within current resources.

The bill would take effect September 1, 2009.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 529 Health and Human Services Commission

LBB Staff: JOB, SD, CL, JI, DM

Certification of Compliance with Rule 13, Section 6(b), House Rules of Procedure

Rule 13, Section 6(b), House Rules of Procedure, requires that a copy of a conference committee report signed by a majority of each committee of the conference must be furnished to each member of the committee in person or if unable to deliver in person by placing a copy in the member's newspaper mailbox at least one hour before the report is furnished to each member of the house under Section 10(a) of this rule. The paper copies of the report submitted to the chief clerk under Section 10(b) of this rule must contain a certificate that the requirement of this subsection has been satisfied, and that certificate must be attached to the printed copy of the report furnished to each member under Section 10(d) of this rule. Failure to comply with this subsection is not a sustainable point of order under this rule.

I certify that a copy of the conference committee report on H. B. 1030 was furnished to each member of the conference committee in compliance with Rule 13, Section 6(b), House Rules of Procedure, before submission of the paper copies of the report to the chief clerk under Section 10(b), Rule 13, House Rules of Procedure.

John Frullo
(name)

5/25/09
(date)