

## **BILL ANALYSIS**

C.S.H.B. 3388  
By: Sheffield  
Public Health  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

It has been suggested that certain of the state's public benefit programs would achieve better outcomes and the state would realize cost savings if guidelines for the reimbursement of prescription drugs were better established in statute. C.S.H.B. 3388 seeks to establish those guidelines and set out certain related requirements.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 2 of this bill.

### **ANALYSIS**

C.S.H.B. 3388 amends the Government Code to require a Medicaid managed care organization (MCO) or a pharmacy benefit manager administering a pharmacy benefit program on behalf of the MCO to reimburse a pharmacy or pharmacist, in accordance with rules adopted by the executive commissioner of the Health and Human Services Commission (HHSC), that:

- dispenses a prescribed prescription drug, other than a drug obtained under the federal Public Health Service Act, to a recipient for not less than the lesser of:
  - the reimbursement amount for the drug under the vendor drug program, including a dispensing fee that is not less than the dispensing fee for the drug under the vendor drug program; or
  - the amount claimed by the pharmacy or pharmacist, including the gross amount due or the usual and customary charge to the public for the drug; or
- dispenses a prescribed prescription drug obtained at a discounted price under that federal act to a recipient for not less than the reimbursement amount for the drug under the vendor drug program, including such a dispensing fee.

The bill sets out the factors on which the dispensing fees adopted by the executive commissioner must be based.

C.S.H.B. 3388 requires the methodology adopted by rule by the executive commissioner to determine Texas pharmacies' actual acquisition cost (AAC) for purposes of the vendor drug program to be consistent with the actual prices Texas pharmacies pay to acquire prescription drugs marketed or sold by a specific manufacturer and to be based on the National Average Drug Acquisition Cost published by the federal Centers for Medicare and Medicaid Services or another publication approved by the executive commissioner.

C.S.H.B. 3388 requires the executive commissioner to develop a process for the periodic study of Texas retail pharmacies' AAC for prescription drugs, Texas specialty pharmacies' AAC for prescription drugs, retail professional dispensing costs, and specialty pharmacy professional dispensing costs and to publish the results of each study on the HHSC website.

C.S.H.B. 3388 requires HHSC, not less frequently than once every two years, to conduct a study of Texas pharmacies' dispensing costs for retail prescription drugs, specialty prescription drugs, and drugs obtained under the federal Public Health Service Act. The bill requires the executive commissioner, based on the results of the study, to adjust the minimum amount of the retail professional dispensing fee and specialty pharmacy professional dispensing fee and the dispensing fee for drugs obtained under that act.

C.S.H.B. 3388 revises the requirements for the outpatient pharmacy benefit plan provided for as part of a Medicaid managed care contract by removing provisions relating to the maximum allowable cost list for drugs and requiring instead the applicable MCO or pharmacy benefit manager to comply with the bill's provisions providing for the Medicaid reimbursement methodology for prescription drugs as a condition of contract retention and renewal. The bill makes related revisions to the contract requirements.

C.S.H.B. 3388 amends the Health and Safety Code to require an MCO providing pharmacy benefits under the child health plan program (CHIP) or a pharmacy benefit manager administering a pharmacy benefit program on behalf of the MCO to comply with the bill's provisions providing for the Medicaid reimbursement methodology for prescription drugs.

C.S.H.B. 3388 repeals Section 533.005(a-2), Government Code.

#### **EFFECTIVE DATE**

March 1, 2020.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 3388 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute includes provisions relating to the reimbursement of prescription drugs under Medicaid and CHIP and does not include any provisions from the original, which relates to the delivery of outpatient prescription drug benefits under certain public benefit programs, including Medicaid and CHIP.