

- SUBJECT:** Creating a state bulk purchasing program for pharmaceuticals
- COMMITTEE:** Public Health — committee substitute recommended
- VOTE:** 8 ayes — Gray, Coleman, Capelo, Delisi, Longoria, Maxey, Uresti, Wohlgemuth
- 0 nays
- 1 absent — Glaze
- WITNESSES:** For — Lisa McGiffert, Consumers Union; *Registered but did not testify:* Anne Dunkelberg, Center for Public Policy Priorities
- Against — None
- On — Matthew Keith, UTMB Correctional Managed Health Care; Marjorie Powell, Pharmaceutical Research and Manufacturers of America; *Registered but did not testify:* Joe Walton, Texas Department of Health
- BACKGROUND:** Each year, Texas pays for millions of prescription pharmaceuticals. The state's primary purchasers are the Texas Department of Health (TDH, through its Medicaid Vendor Drug Program), Texas Department of Mental Health and Mental Retardation (MHMR), Texas Department of Criminal Justice (TDCJ), Employees Retirement System of Texas (ERS), and Teacher Retirement System (TRS). Each agency has its own drug purchasing program and negotiates separately with drug manufacturers and wholesalers for discounted prices.
- 42 U.S.C., sec. 1396r-8(k) defines the average manufacturer price as the average price paid to the manufacturer after deducting customary prompt-payment discounts. The price applies to outpatient drugs in the United States that are bought by wholesalers and distributed to retail pharmacies.
- DIGEST:** CSHB 915 would establish an Interagency Council on Pharmaceuticals Bulk Purchasing. This council would comprise representatives of TDH, MHMR, TDCJ, ERS, TRS, and any other agency that buys pharmaceuticals. The

council would be charged with investigating all options for better state purchasing power. It also would have to make recommendations about drug utilization review, prior authorization, restrictive formularies, mail-order programs, cost-sharing, and limits on the number of prescriptions.

The council would have to develop bulk purchasing policies that agencies would follow. An agency could opt out of the policies if doing so would result in the agency's paying a lower price. If an agency opted out, it would have to report the price it paid and the name of the entity that sold the drugs.

The council would have to adopt rules to elect a presiding officer, who would serve a two-year term expiring each February 1 of each odd-numbered year. The position would rotate among all members. Members would not be compensated for serving on the council, but could be reimbursed for travel expenses. The agencies would provide support staff for the council.

CSHB 915 also would require manufacturers and wholesalers to disclose information about drug prices. Manufacturers of drugs sold in Texas would have to file, at least annually, information about the average manufacturer price for each drug and the prices that wholesalers paid. Wholesalers would have to file, at least annually, information about the prices they paid for each drug sold in the state. The attorney general could investigate a manufacturer or wholesaler to determine the accuracy of the information filed.

This bill would take effect September 1, 2001.

**SUPPORTERS  
SAY:**

CSHB 915 would save Texas money by allowing agencies to take advantage of state purchasing power. Agencies pay different prices for the same drugs because some agencies receive better pricing than others. If all agencies used a bulk purchasing system, all would get the lowest price that the state could negotiate. This measure would save the state about \$13 million in general revenue-related funds in fiscal 2002-03 alone.

The bill would bring all concerned state agencies together to address this issue. No mechanism exists now for the various agencies that pay for prescription drugs to work together on bulk purchasing programs. The creation of a council would ensure that all state entities were represented and involved in the process.

In an environment of rising prescription drug costs, this would be a way to reduce expenditures. As pharmaceutical drug costs and usage increase, the state's bill for drug benefits will continue to rise. Short of limiting benefits, the state's only option is to seek a better pricing structure.

Texas should take advantage of its size. Other, smaller states are considering similar programs, but because Texas is a larger market, the program likely would face proportionate resistance. Texas should not wait while other states save money by taking advantage of bulk purchasing programs.

CSHB 915 would require wholesalers and manufacturers to provide the information that the state needs to calculate Medicaid rebates and negotiate bulk purchasing. Manufacturers already provide average manufacturer prices as a condition for Medicaid reimbursement, but the attorney general's investigations of several pharmaceutical companies have shown those data to be unreliable. The state needs certified data from both manufacturers and wholesalers, which could be cross-referenced for accuracy and provide a better picture of Medicaid rebate rates.

OPPONENTS  
SAY:

CSHB 915 would not provide significant savings through bulk purchasing. Under federal regulation, Medicaid receives rebates from manufacturers. State agencies not involved with Medicaid, accounting for a significant portion of the state's drug expenditures, are not eligible to receive those rebates. Other agencies primarily may buy certain classes of drugs, such as new-generation medications purchased through MHMR, and would experience only incremental savings by joining with agencies that primarily buy different categories of drugs.

Restrictive formularies and other limits on benefits that the council would consider could be inappropriate for some beneficiaries. Prison inmates should not have the same level of drug benefits as teachers, and state employees in different careers might need different types of coverage. A one-size-fits-all approach for the state would not work well.

CSHB 915 would punish the entire pharmaceutical industry for the actions of a few. The attorney general found that a few manufacturers had inflated the reported prices and has taken appropriate legal action. Because the data are available and the attorney general has the authority to take action against

fraudulent behavior, the state has all of the measures in place to determine accurate Medicaid rebate rates. The rest of the industry should not be required to share proprietary information.

NOTES:

According to the fiscal note, the bulk purchasing program would save the state \$13.3 million in general revenue-related funds in fiscal 2002-03 and \$42.3 million over five years. Estimated federal fund savings would amount to \$24.2 million in fiscal 2002-03 and \$76.6 million over five years.

The committee substitute would grant HHSC the authority to add other agencies to the council than specified in the filed version and would allow an exemption from the purchasing system in certain cases. It would direct the council to investigate options for better purchasing power and study and make recommendations about purchasing and benefits practices, and it would allow the council to require information from wholesalers and manufacturers.

An identical bill, SB 894 by Moncrief, was reported favorably without amendment by the Senate Health and Human Services Committee on April 9.