

BILL ANALYSIS

Senate Research Center

H.B. 3286
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Health & Human Services
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Texans on Medicaid who need prescription medications are subject to the state's Medicaid preferred drug list. This restricts their access to necessary medications and can lead to serious health consequences. Recent managed care contract changes have further limited a managed care organization's (MCO) ability to allow exceptions to the state's preferred drug list. MCOs are now forced to decide between patient care and contract violations. In contrast, patients in the commercial market have access to mandatory exception processes, called step therapy exceptions. Health plans in the private market must grant an exception to their step therapy protocol for a patient who is stable on a drug if the change is expected to be ineffective or cause harm to the patient. This lack of exception protections for Texas Medicaid patients creates barriers to accessing necessary medications. People are often forced off of medications that are working for them, which can lead to serious health consequences. H.B. 3286 seeks to ensure Medicaid patients have access to necessary medications by adding exception protections to the Texas Medicaid program, which will give Medicaid patients similar mandatory exception processes as patients in the commercial market. The bill also creates a database for providers to check if drugs are on the state's preferred drug list.

H.B. 3286 amends current law relating to prescription drug benefits under Medicaid and the child health plan program.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Health and Human Services Commission in SECTION 2 (Section 533.071, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter B, Chapter 531, Government Code, by adding Section 531.0691, as follows:

Sec. 531.0691. **VENDOR DRUG PROGRAM INCLUSION.** Requires the Health and Human Services Commission (HHSC) to ensure that the vendor drug program includes all drugs and national drug codes made available on the federal Medicaid Drug Rebate Program regardless of the status of the certification of information for the drug.

SECTION 2. Amends Chapter 533, Government Code, by adding Subchapter C, as follows:

SUBCHAPTER C. PRESCRIPTION DRUG BENEFITS UNDER CERTAIN OUTPATIENT PHARMACY BENEFIT PLANS

Sec. 533.071. **PREFERRED DRUG LIST EXCEPTIONS.** (a) Requires HHSC to adopt rules allowing exceptions to the preferred drug list if:

(1) the drug required under the preferred drug list:

(A) is contraindicated;

(B) will likely cause an adverse reaction in or physical or mental harm to the recipient; or

(C) is expected to be ineffective based on the known clinical characteristics of the recipient and the known characteristics of the prescription drug regimen;

(2) the recipient previously discontinued taking the preferred drug at any point in the recipient's clinical history and for any length of time because the drug:

(A) was not effective;

(B) had a diminished effect; or

(C) resulted in an adverse event;

(3) the recipient was prescribed and is taking a nonpreferred drug in the antidepressant or antipsychotic drug class and the recipient:

(A) was prescribed the nonpreferred drug before being discharged from an inpatient facility;

(B) is stable on the nonpreferred drug; and

(C) is at risk of experiencing complications from switching from the nonpreferred drug to another drug; or

(4) the preferred drug is not available for reasons outside of the Medicaid managed care organization's control, including because:

(A) the drug is in short supply according to the Food and Drug Administration Drug Shortages Database; or

(B) the drug's manufacturer has placed the drug on backorder or allocation.

(b) Provides that an exception provided under this section does not subject the Medicaid managed care plan to liquidated damages for failing to comply with the preferred drug list.

SECTION 3. Amends Section 531.072, Government Code, by adding Subsections (b-3), (g), and (h), as follows:

(b-3) Requires that the preferred drug lists, notwithstanding Subsection (b) (relating to authorizing the preferred drug lists to contain only drugs provided by a manufacturer or labeler that reaches an agreement with HHSC on supplemental rebates), contain all therapeutic equivalents for a generic drug on the preferred drug list.

(g) Requires HHSC to develop an expedited review process to consider requests from managed care organizations and providers to add drugs to the preferred drug list.

(h) Requires HHSC to grant temporary non-preferred status to new drugs that are available but have not yet been reviewed by the drug utilization review board (board) and establish criteria for authorizing drugs with temporary non-preferred status.

SECTION 4. Amends Section 531.073(b), Government Code, as follows:

(b) Deletes existing text requiring that the procedures for the prior authorization requirement under the Medicaid vendor drug program specifically ensure that a prior

authorization requirement is not imposed for a drug before the drug has been considered at a meeting of the board under Section 531.0736 (Drug Utilization Review Board). Makes nonsubstantive changes.

SECTION 5. Amends Sections 531.0736(c) and (d), Government Code, as follows:

(c) Requires the executive commissioner of HHSC to determine the composition of the board, which is required to:

(1) makes no changes to this subdivision;

(2) include three representatives of managed care organizations, all of whom are required to be physicians or pharmacists, rather than include two representatives of managed care organizations as nonvoting members, one of whom is required to be a physician and one of whom is required to be a pharmacist; and

(3)-(4) makes no changes to these subdivisions.

(d) Authorizes members appointed under Subsection (c)(2), notwithstanding any other law, to attend quarterly and other regularly scheduled meetings, but members are prohibited from certain actions, including attending portions of the executive sessions in which confidential drug pricing information is shared.

SECTION 6. Requires a state agency, if necessary for implementation of a provision of this Act, to request a waiver or authorization from a federal agency, and authorizes a delay of implementation until such a waiver or authorization is granted.

SECTION 7. Effective date: September 1, 2023.