

A Review of  
**The Health and Human Services Commission's  
Reports of Average Drug Prices Related to  
the Medicaid Vendor Drug Program**

June 28, 2004

Members of the Legislative Audit Committee:

The Health and Human Services Commission (Commission) did not comply with Rider 33 of the General Appropriations Act (78th Legislature, Regular Session, page II-54). The Commission was unable to produce semi-annual reports of average drug manufacturer prices and wholesale purchase prices as required by Rider 33 because it could not obtain drug pricing information from the Interagency Council on Pharmaceutical Bulk Purchasing (Council). In addition, the Council asserts that the necessary funding to set up a system to gather the required pricing information is not available. As a result, we were unable to review:

- A schedule of average manufacturer prices and wholesale purchase prices.
- Which manufacturers or wholesalers did not provide data as required by state law.
- Actions the Office of the Attorney General took to enforce compliance.
- Details of how the reported data has or will influence reimbursement levels the Commission established for prescription drugs.

The Commission was primarily unable to produce the reports required by the rider because of conflicts in legislation that limit its access to the drug pricing information. House Bill 915 (77th Legislature) created the Council and directed it to “develop procedures under which the council may disclose information relating to the prices that manufacturers or wholesalers charge for pharmaceuticals.” However, this legislation also prohibited the Council from disclosing information that “identifies a specific manufacturer or wholesaler or the prices charged by a specific manufacturer or wholesaler for a specific pharmaceutical.” Attorney General’s Opinion No. GA-0019, dated February 10, 2003, cited that specific section of the legislation when concluding that “neither the Texas Department of Health nor the Interagency Council on Pharmaceutical Bulk Purchasing may disclose ‘information that identifies a specific manufacturer or wholesaler or the prices charged by a specific manufacturer or wholesaler for a specific pharmaceutical.’”

Furthermore, a March 10, 2004, letter from the Council to the Commission’s executive management specified that “the Council is not able to comply with ... Rider 33.” The letter stated that House Bill 2292 (78th Legislature, Regular Session) made manufacturing pricing available to the Medicaid Vendor Drug Program “for its sole use.” The Council is not part of the Medicaid Vendor Drug Program. Therefore, the Council was unable to implement procedures for obtaining pricing information. The letter also stated, “To further restrict the issue, [the Texas Department of Health] has informed the council that to set up a system to gather the required pricing ... would cost approximately \$100,000, which is not available under current budget restrictions.”

**Summary of Objective, Scope, and Methodology**

Our objective was to review a copy of the Health and Human Services Commission's (Commission) semi-annual reports of average drug manufacturer prices and wholesale purchase prices related to the Medicaid Vendor Drug Program.

Our scope covered the Commission's report schedules for September 1, 2003, and February 1, 2004.

Our methodology consisted of trying to obtain the reports from the Commission or obtaining explanations from the Commission for not complying with the reporting requirements of Rider 33.

The information used in this report has not been subjected to the tests and confirmations that would be performed in an audit.

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The text of Rider 33 is included in the attachment to this letter. If you have any additional questions, please contact Nicole Guerrero, Audit Manager, at (512) 936-9500.

Sincerely,

Lawrence F. Alwin, CPA  
State Auditor

Attachment

ejm

cc: Mr. Albert Hawkins, Executive Commissioner, Health and Human Services Commission

## *Additional Information*

### *Rider 33, Page II-54, General Appropriations Act (78th Legislature, Regular Session)*

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Prescription Drug Cost-Efficiency. It is the intent of the Legislature that the Health and Human Services Commission provide medically-needed prescription drugs in the most cost-efficient manner possible. Further, it is the intent of the Legislature that the Commission take into account data reported by the drug manufacturers and wholesalers, pursuant to §§ 431.116 and 431.208 of the Health and Safety Code, when establishing reimbursement rates for prescription drugs. Notwithstanding other provisions contained in this Act, funds appropriated above in Strategy B.2.8, Medicaid Vendor Drug Program, are made subject to the following conditions:

- a. The Health and Human Services Commission shall provide a schedule of average manufacturer prices and wholesale purchase prices, as compiled from drug manufacturers and wholesalers pursuant to §§ 431.116 and 431.208 of the Health and Safety Code, to the State Auditor's Office, the Governor, and the Legislative Budget Board on a semi-annual basis.
  - (1) Specifically, the Commission shall provide a schedule with updated data on the following dates: September 1, 2003, February 1, 2004, September 1, 2004, and February 1, 2005.
  - (2) The schedule shall detail the source and date of each reported price.
  - (3) The schedule shall note each manufacturer and wholesaler participating in the Medicaid or CHIP Vendor Drug programs that has not provided data as required by state law. The schedule shall also note what action has been taken by the Attorney General to enforce compliance.
  - (4) The report shall detail how the reported data has or will influence the reimbursement levels established by the Health and Human Services Commission for prescription drugs.
- b. No funds may be transferred into Strategy B.2.8, Medicaid Vendor Drug Program, without the approval of the Legislative Budget Board.