



TrueCare Pharmacy Legislative Roundup

The Voice of Independent Pharmacy in Texas - July 2005

"Most of this session we spent playing defense. Every day there would be another pharmacy issue we had to deal with. But this year we had



more help from pharmacists and pharmacy groups than we have ever had before.

And TrueCare was right there with us."

**-- Rep. Chuck Hopson,
D-Jacksonville
Independent Pharmacist
and True Care member**

"When the regular session is over, you think you can breathe a sigh of relief, but that is not the case today. We cannot just sit back and feel



good about how well we did .(in the regular session.) On the tax side of school funding, in this special session, there will be some shifts to reduce taxes for some and add more taxes for others. That could have long lasting implications for small businesses including pharmacies."

**-- Sen. Leticia Van de Putte
D-San Antonio
Independent Pharmacist**

NUMEROUS BILLS AFFECT INDEPENDENT PHARMACY

SPECIAL REPORT: LEGISLATIVE UPDATE

The stakes were high. So important, in fact, that almost every pharmacy group in Texas was united in their efforts to make solid gains in the 79th Texas Legislative Session during 2005. For pharmacy, the results could determine the future of the industry for years to come.

The issues were many: PBM regulation, fair reimbursements, legalizing drug imports from foreign countries, and simply ensuring that pharmacy's voice was recognized and heard by decision makers across the legislative and regulatory spectrum. "Almost every time we thought we were making progress, someone would throw a wrench in the works," said TrueCare Legislative Team Member Robert Culley. "But we would just pick up and start again. And in the end, TrueCare and all associated pharmacy groups made a huge difference for independent pharmacists and the pharmacy industry overall."

This report is meant to give independent pharmacists a brief overview of some of the pharmacy-related legislation that was introduced, passed and signed into law this year. It's important that you read it because each of these new laws will impact you, how you do business, your customers and their access to prescriptions.

Over the past several years, TrueCare Pharmacy has dedicated time and resources to ensuring that its Texas legislative program is productive and beneficial to its members and to all independent pharmacists in Texas. TrueCare hires a three-member legislative team that works year-round to educate legislators and decision makers on how their actions will affect their community and independent pharmacists. Members of the all-volunteer Texas Legislative Council donate their time and hundreds of hours to make sure that independent pharmacy's voice is heard from the steps of the Capitol to the halls of regulatory agencies like the State Board of Pharmacy and the Department of Insurance. TrueCare's efforts have made life -- and business -- better for independent pharmacists across Texas. We hope that this report will show some of the successes we have enjoyed and some of the opportunities we have in the future to advance our cause.

TEXAS PHARMACIES AUTHORIZED TO COMPOUND DRUGS FOR OFFICE USE

"TrueCare pharmacists and other pharmacy groups have made a huge difference in helping legislators understand the importance of independent pharmacy in the communities they serve."

**-- Rep. Gene Seaman,
R-Corpus Christi, Vice Chair
of the House Insurance
Committee**

"The bill on compounding was especially important to independent pharmacists.

It is one of the ways that we can remain competitive with larger chain pharmacies."

**-- Bentley Hawley
Odessa Pharmacist and
Chair, TrueCare Texas
Legislative Council**

"This legislative session was a big success for pharmacy. We fared OK on the workers comp reforms and the compounding bill was an outstanding success. I wish we could have gotten a provider increase for Medicaid but this time it wasn't possible."

**-- Sen. Leticia Van de Putte,
D-San Antonio**

Texas pharmacies will be authorized to compound drugs for office use under a law recently signed by Gov. Rick Perry. The bill is considered a major victory for independent pharmacy.

Senate Bill 492, by Sen. Leticia Van de Putte, D-San Antonio, and Rep. Dianne Delisi, R-Temple, amends the Occupations Code to allow for dispensing, sale, or distribution of compounded drugs to state-licensed physicians for in-house administration and the distribution of compounded and repackaged products to and from pharmacies under common ownership. An analysis of the bill revealed that in recent years a growing number of medications have been unavailable from the manufacturer for various reasons. Those shortages can sometimes last for months. As a result, some

COMPOUNDED DRUGS



SEN. VAN DE PUTTE

REP. DELISI

critical products are unavailable for essential patient care demands in hospitals, clinics, and surgical centers. Such medications require compounding and the legislation ensures that the process occurs in the most controlled and safe pharmacy environment. Compounding pharmacists will not compound if the drug is commercially available and pharmacies will not be able to compound, dispense, sell, or distribute without a physician's order or prescription. Many independent pharmacies also fill a void in veterinary compounding.

MORAL OBJECTION TO FILLING PRESCRIPTIONS DIES QUIET DEATH IN TEXAS LEGISLATURE

Several proposals revolving around a controversial issue giving pharmacists the ability to refuse to fill prescriptions for the morning-after-pill and contraceptives on "moral grounds" never made it out of committee during the legislative session. Pharmacists were deeply divided over the issue.

Similar initiatives had become a national issue with one governor barring druggists from refusing to dispense birth control. Some pharmacists, including several in Texas, have come under attack for not filling emergency contraceptive prescriptions for women who have been the victims of rape and sexual abuse.

At least four pieces of legislation were filed revolving around the issue. Some allowed emergency contraceptives such as the morning-after-pill to be dispensed without a doctor's prescription. Others allowed pharmacies and pharmacists the right to refuse a service and health insurers the right to refuse to provide a benefit based on moral or ethical grounds.

RIGHT TO REFUSE

TECHNICALITIES KILL MAJOR TEXAS PBM LEGISLATION

Major PBM legislation supported by TrueCare that would have helped regulate questionable business and financial practices by the multi-billion dollar PBM industry died on an 11th hour technicality after first passing a House-Senate conference committee during the 79th Legislative Session.

Some House members questioned whether Senate amendments added to the bill and adopted by the conference committee were germane and threatened to call points of order if the conference committee report was brought up on the House floor in the waning hours of the legislative session. The bill had passed both the Texas House and Senate, and was agreed to by the joint conference committee. The actions of questioning legislators forced sponsor Rep. Suzanna Hupp, R-Lampasas, to pull down the bill, ending chances for the groundbreaking legislation to pass this session. The PBM regulation effort has drawn national attention to Texas. The success this session has set the stage for future pro pharmacy legislation.

The Senate version of the measure would have created auditing standards for PBMs, made language from a lawsuit settlement with Medco apply to PBM contracts with ERS and TRS, and set up an interim committee to study the PBM industry. TrueCare lobbyist and Legislative Team Member Robert Culley said he is not giving up and hopes that Speaker of the House Tom Craddick, whose father was a pharmacist, will approve an interim study on the PBM issue.

When it came to voicing support for measures that would help put Texas pharmacy on a more equal footing with Pharmacy Benefit Managers, no group or its members has been more active than those of TrueCare Pharmacy. One of the major sponsors of the Texas Pharmacy Coalition Legislative Conference on April 7, TrueCare and its members were at the forefront of lobbying legislators on pharmacy related legislation and registering in support of two bills getting a hearing by a subcommittee of the House Insurance Committee. The two bills, HB 2570 by Galveston Rep. Craig Eiland and HB 2674 by Rep. Suzanna Hupp of Lampassas, would have prevented health benefit plans from requiring patients to obtain their prescription drugs exclusively by mail order and from discriminating between mail order and community pharmacies through quantity limitations, co-insurance provisions, or other monetary incentives. HB 2674 would have required HHSC to adopt formularies for benefits provided by ERS and Teachers Retirement System (TRS) health benefit plans. The bill also prohibits PBMs that contract with ERS and TRS from referring patients to a mail-order pharmacy that they own. The two bills passed the subcommittee but didn't make it out of committee before the end of the session.

PBM REGULATION

"Texas pharmacy deserves a level playing field with PBMs where everyone gets the chance to compete for the right to fill prescriptions. Plus it is just good public policy to protect small businesses throughout Texas.

-- Rep. Gene Seaman, R-Corpus Christi, Vice Chair of the House Insurance Committee

"It is frustrating to be so close to passing significant PBM regulation and then lose on a technicality. Everybody worked together but we've still got a long way to go."

-- Robert Culley, TrueCare Lobbyist and Legislative Team Member

"It was a David and Goliath fight. We slung the rock but the PBMs were wearing a giant catcher's mitt in the form of millions of dollars put into state and federal lobbying efforts against regulation. But like David, Texas independent pharmacists will continue to stand strong against what is wrong. And it is wrong for an industry to refuse to answer questions about how they spend money for questionable business and financial practices that often leave employers, beneficiaries and community pharmacists in the cold."

-- Bentley Hawley, Chair, TrueCare Texas Legislative Council

"I think members realize the enormous cost of prescription drug medication to their constituents. Members want their constituents to be safe in seeking alternative sources.

Like the pharmaceutical industry says, this is a safety issue. My view of how you deal with that safety issue is, you find out who can provide the drugs safely and you let people know."

**-- Rep. Scott Hochberg,
D-Houston,
author of legislation on drug
imports in comments to
the Quorum Report**

"Until the federal Food, Drug and Cosmetic act is clarified, it is unclear how much authority state officials have to authorize this practice."

**-- John Heal
TrueCare lobbyist and
Legislative Team Member**

"FDA is very concerned about the safety risks associated with the importation of prescription drugs from foreign countries... If an entity or person were to import prescription drugs into the State of Texas from Canada, that importation would violate the FFDCA in virtually every instance."

**-- Randall Lutter
FDA's acting
Associate Commissioner for
Policy and Planning.**

CANADIAN DRUG IMPORT BILL PASSES; BUT IT'S EFFECT RAISES QUESTIONS

Supporters of importing prescription drugs from Canada weren't able to pass their original bills to require the Texas Board of Pharmacy to license and inspect pharmacies located in Canada -- so they tacked it onto the Sunset bill reauthorizing the State Board of Pharmacy. The bill passed including provisions to make it easier for Texans to import drugs from Canada. Despite the fact that the legislation has already been signed by Gov. Rick Perry, doubts linger about whether it will ever go into effect.

The federal Food and Drug Administration recently wrote Gov. Perry warning him about the safety of importing drugs from foreign countries and expressing concern over the legality of the Texas law. In addition, Canada's Health

Minister Ujjal Dosanj said his country is drawing up legislation to ban the bulk sale of prescription drugs and other medicines to the United States to protect his country's drug supplies. He said the legislation would block plans by some U.S. states to make bulk purchases of medicines from Canada. Prices in Canada are usually lower because of government-imposed limits on what pharmaceutical companies can charge for their drugs. The bill also stops Canadian Internet pharmacies from selling cheap medicines to Americans who do not have a Canadian doctor.

Under the new law, scheduled to go into effect Sept. 1, the pharmacy board will make initial inspections of up to 10 Canadian pharmacies and later will conduct random inspections of them. Texans would be able to buy the prescription drugs online from pharmacies that pass the inspection. Among its provisions, prescription drug orders would have had to be written by a U.S. physician, and Texas pharmacies would be permitted to order prescription drugs from Texas-licensed Canadian pharmacies.

Similar websites exist in nine other states, in addition to the District of Columbia. Pharmacy has been opposed to the legislation primarily because of safety concerns over prescriptions from foreign countries. Canada also imports many of its own prescription drugs from other countries. In its seven-page June 17 letter to Gov. Perry, the FDA warns about those safety concerns and details issues that arise from drug importation from Canada. Those warnings, plus the Canadian government's concerns about maintaining enough prescription drugs for its citizens, cause some to question the legality of the law.



Sen. Rodney Ellis and Rep. Scott Hochberg talk about their bill to make it easier to import Canadian drugs -- Texas Senate Photo.

PHARMACY READIES FOR MORE PAPERWORK AS ANTI-METH LEGISLATION GOES INTO EFFECT

On August 1, 2005, legislation goes into effect that puts many of the country's most common cold and allergy pills behind a pharmacist's counter. The bills, designed to stop a growing methamphetamine problem in Texas, also add additional paperwork to pharmacy's heavy workload and put pharmacists at risk of penalties up to \$1,000 a day if they violate the law.

Gov. Rick Perry has signed two pieces of legislation that were part of an attempt to address the methamphetamine problem by the 79th legislature. One, House Bill 164 by Rep. Leo Berman, R-Tyler, has the most dramatic effect on pharmacists and consumers. It takes many of the country's most common cold and allergy medicines that were previously available over-the-counter and puts them under lock and key. The other, Senate Bill 66, by Sen. Jane Nelson, R-Lewisville, establishes new programs to



Rep. Leo Berman

educate and protect children from the dangers of methamphetamine. Rep. Berman's bill restricts the sale of pseudoephedrine products, increases law enforcement authority, and establishes new wholesale distribution requirements. In addition to requiring pharmacies and certified retailers to check the purchaser's drivers license and to limit sales to people who are 16 years of age or older, the law requires pharmacies to make sure the purchaser only buys two packages of the product or less than 6 grams of pseudoephedrine per transaction. Pharmacies must also keep a log that shows the purchaser's name, the date of sale, the item and number of grams sold and the purchaser's signature. The record has to be kept for two years from the date of purchase. The law also requires pharmacies that sell over-the-counter pseudoephedrine products to keep those products behind the pharmacy counter or in a locked case within 30 feet and direct view of pharmacy counter.

ANTI-METH LAWS

House Bill 164

- Non-pharmacy retailers must receive state certification to sell solid-form pseudoephedrine, an ingredient found in cold remedies commonly used to make the drug.
 - Retailers must limit access to products containing pseudoephedrine by placing them behind a pharmacy counter or in a locked case, and limit each purchase to no more than six grams or two packages.
 - Individuals buying pseudoephedrine or similar products must be at least 16.
 - Protective service workers have the authority to immediately remove a child from a meth lab.
- Facts From The Office of Texas Governor Rick Perry.

"Methamphetamine is spreading like a plague across Texas, endangering thousands of lives and the safety of our neighborhoods. These new laws will make it harder for drug dealers to poison our citizens, empower Texans to take a more active role in combating meth use, and protect innocent children exposed to this dangerous drug."

-- Texas Governor Rick Perry
On House Bill 164 and Senate Bill 66

"As of Aug. 1, 2005, products containing solid forms of ephedrine and pseudoephedrine will be removed from the shelves of every store in the state, and will be sold only in stores with pharmacies. In counties with no pharmacies ... the bill allows a permitting process to allow non-pharmacies to sell the products."

-- Rep. Leo Berman, R-Tyler,
Author of House Bill 164

"Pharmacists don't underestimate the growing methamphetamine problem in Texas. Meth lab seizures have quadrupled in recent years and the number of meth users entering treatment centers has increased six times since 2000. The question is whether giving pharmacists additional paperwork and new mandates will solve the problem. Many people don't think it will."

-- John Heal,
TrueCare Legislative Team

"Overall pharmacy showed an unprecedented, unified front on many different issues during the legislative session.. That was particularly important when we have the Sunset Bill to authorize the State Board of Pharmacy. Things could have gotten really disruptive on that and we kind of held our own ."

**-- Sen. Leticia Van de Putte
D-San Antonio and
Independent Pharmacist**

"The Irma Rangel School of Pharmacy was named after the first female Hispanic legislator in Texas. Her sister is a longtime South Texas pharmacist and Irma Rangel was a adamant supporter of pharmacy issues over her years in the legislature. The need for more Texas pharmacists has never been greater -- so far the Rangel School has received more than 700 applications and 30 of an expected 70 students have already been accepted for the inaugural class, which is expected to graduate in spring 2010."

**-- Steve Ray
TrueCare Legislative Team**

"Canada cannot be the drugstore for the United States of America. 280 million people can't expect us to supply drugs to them ... (at) controlled prices within our pricing regime."

**-- Ujal Dosanjh
Canada Health Minister on
selling cheap drugs to
Americans**

CHANGES IN MEDICAID AUDIT PRACTICES MAY SAVE PROVIDERS THOUSANDS OF DOLLARS

A new law that addressed audit practices in the Health and Human Services Commission could save pharmacy providers thousands of dollars in unnecessary legal fees. SB 630 by Sen. Leticia Van de Putte, D-San Antonio, and Reps.

Vicki Truitt, R-Keller and Yvonne

Gonzalez Toureilles, D-Alice, sets procedures and rules for provider audits in the Medicaid program, something missing in current rules. Many providers who were previously audited didn't get a chance to explain discrepancies to auditing agencies before they had to hire legal counsel to mediate audit findings. Under the new law, HHSC will establish rules regulating provider audits that include provisions requiring prior notification of audits, time limits regarding the scope of an audit, uniform audit standards and parameters, provider response processes, and reporting time frames. The legislation also sets up an ad hoc peer-review panel of providers to administer an informal process where a provider may obtain an early review of the audit report or may appeal an unfavorable audit finding without the need to obtain legal counsel. In addition, an unfavorable audit finding that is found to be unsubstantiated may be revised or dismissed.

MEDICAID AUDITS

TWO NEW PHARMACY SCHOOLS FACE SHORTAGE OF FUNDS, LITTLE SUPPORT

Efforts to get two Texas pharmacy schools up and operating in North and South Texas fell short in the legislature.

Rep. Helen Giddings, D-Dallas, and Sen. Jane Nelson, R-Flower Mound, saw their companion bills to establish a school of pharmacy at the University of North Texas Health Sciences Center at Fort Worth die in education committees. In addition, legislation to get \$3 million to repay the A&M system for funds to open the Irma Rangel School of Pharmacy at Texas A&M-Kingsville and an additional \$13 million for the school's 2006-07 operating budget died in the House Appropriations Committee. Instead A&M - Kingsville received \$275,000 for the 2006 fiscal year and nothing

PHARMACY EDUCATION

for the 2007 fiscal year. The \$13 million was diverted to a OB-GYN clinic in Midland, the hometown of Speaker of the House Tom Craddick.

Officials still hope money can be found for the Rangel Pharmacy school through the A&M University System. State Rep. Juan Escobar, D-Kingsville, said some \$20 million was restored in the Appropriations process to the A&M system, which also received an additional \$30 million. Escobar said that Appropriations Chairman Rep. Jim Pitts, R-Waxahachie, told him that A&M would fund the school out of that \$30 million.

PHARMACY WINS CONCESSIONS IN NEW WORKERS COMP LAW

Pharmacy supporters won some major concessions

WORKERS COMP

in House Bill 7, a bill that will overhaul the Texas workers' compensation system. The legislation, signed into law on June 1 by Gov. Rick Perry, contains provisions that help pharmacy including rules that provide fair and reasonable reimbursements, ban delivery of prescription medication or services through a workers' compensation health care network, and a requirement that workers' comp officials establish rules that allow pharmacies to use third-party entities to process claims on their behalf.

TrueCare and other pharmacy groups worked with numerous state officials and lawmakers on the new law which abolishes the Texas Workers' Compensation Commission (TWCC) and creates a new division of workers' compensation at the Texas Department of Insurance (TDI). Some of those instrumental in the development of the bill, including changes that will help pharmacy, were Gov. Perry, Rep. Burt Solomons, R-Carrollton and Sen. Todd Staples, R-Palestine. Under the law, which goes into effect in September, a commissioner will be appointed by the governor to oversee the new TDI division.

The legislation also allows insurance carriers to create health care networks for the treatment of workers' compensation injuries but pharmacy supporters successfully added provisions to the bill that keep prescription medication or services from being delivered through any of the workers' compensation health care networks.

In addition, the new law requires that the new commissioner adopt a pharmacy fee schedule that provides fair and reasonable reimbursements to pharmacists. Insurance carriers will be required to reimburse pharmacy services using the fee schedule adopted by TDI or at rates negotiated by contract. The commissioner is also required to establish rules that allow pharmacies to use third-party entities to process claims on their behalf.

Other changes affecting pharmacy include provisions that:

- Require the commissioner to establish rules for a closed formulary for pharmacy benefits;
- Retain the benefit dispute resolution process;
- Maintain the Independent Review Organization process but eliminates the appeal of medical disputes to the State Office of Administrative Hearings;

To assist in the transition of the Workers Compensation Commission to the Texas Department of Insurance, more information concerning the new law will be posted on TWCC's website at www.twcc.state.tx.us under "What's New." The Commission also plans to develop a "Frequently Asked Questions" page concerning the changes as the new law takes effect.

"Sometimes success can be measured more by what your opponents don't accomplish, rather than what your supporters do accomplish. TrueCare has been very effective this session in preventing the passage of legislation that would have negatively impacted independent pharmacy. In addition, our legislative team was able to accomplish great things that benefit pharmacy and give us a better opportunity to be financially successful and to better serve our patients."

**-- Rudy Davila
Texas Legislative Council
and owner of Davila
Pharmacy in San Antonio**

"Many of the bills considered by the Texas Legislature are instrumental in preserving our ability to continue serving the people of this community. The PBM proposals we supported will allow our patrons to make their own choice on where to get their prescriptions filled and help local pharmacists compete on an equal footing in the marketplace."

**-- Allan Pavia,
TrueCare Legislative Council
and owner of Linden Drug**

HOW YOU CAN HELP PROTECT THE FUTURE OF PHARMACY

"We can not take a back seat while special interests continue to push untested programs like forced mail-order on state employees, changes in pricing that affect our bottom line and importing drugs from foreign countries.

We are committed to continuing our first-class legislative efforts and working with regulatory agencies to ensure that the voice of independent pharmacy is loud and clear in Texas."

**-- Nick Smock
President and CEO
TrueCare Pharmacy**

"TrueCare has firmly established itself as a leader on pharmacy issues in the Texas Legislature and among agencies that regulate concerns important to our industry. The support of the national corporate office, the work of the all-volunteer Texas Legislative Council, and the financial contributions by Texas pharmacists to the Pharmacy Survival Fund have all been instrumental in making the future of pharmacy brighter and better in our state and throughout the country."

**-- Steve Ray
Texas Legislative Team**

When independent pharmacists in HHSC's vendor drug program were threatened with unfair reimbursement rates in 2003, the Pharmacy Survival Fund (PSF) provided needed money for a successful legal challenge to stop the proposal. Since then it has produced numerous grassroots education efforts to help fight legislation that would negatively affect pharmacy's bottom line including efforts to force state employees to use mail-order pharmacies. Today the Pharmacy Survival Fund needs your help to continue those efforts. Pharmacy must continue its fight to protect the interests of our industry. To do that we must provide funds for the PSF so that state lawmakers and opinion makers can be made aware of the affects of legislative and regulatory decisions on pharmacy. Your individual or corporate contribute can help you survive efforts that hurt independent pharmacists and the communities they serve. We can set up a direct deposit contribution or you may send a one-time contribution to: Pharmacy Survival Fund, Att: John Heal, 500 W.13th, Austin, TX 78701. For more information call 512-476-8288.

TRUECARE OFFERS VALUE-ADDED PROGRAMS DESIGNED TO ENHANCE PHARMACY PROFITS

TrueCare offers value-added programs and services designed to enhance the profits of independent pharmacies. From a participation-tiered endorsed wholesaler program, to a broad selection of brand and generic products delivered in a timely manner through our centrally-located distribution center, TrueCare rewards you by your level of participation. Simple, easy to manage programs allow you the pricing advantages and operating efficiencies of a chain, as well as the benefits of independence - all backed by superior TrueCare customer service.

The TrueCare third party network provides independent pharmacies professional contract review and the negotiating power to favorably impact contract reimbursement rates. Elimination of aggravating transaction fees, as well as audit support, insurance resolution and timely contact advice are also hallmarks of the TrueCare third party network. A cash card program allows independent pharmacies quality claims processing with control over prescription pricing discounts. TrueCare members also have access to cutting-edge technology solutions such as electronic reconciliation, wholesaler interface software, and software systems designed to increase your profitability.

To find out more contact Ali Raza at 800-331-9284 x 5773

The Texas Legislative Roundup is a product of the TrueCare Texas Legislative Council, a nonpartisan group representing independent pharmacists. For more information call John Heal at 512-476-8288 or Steve Ray at 512-581-9724.