BILL ANALYSIS

C.S.H.B. 18
By: Oliverson
Insurance
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Stakeholders contend that for those who are uninsured and do not have access to prescription drug benefits, the out-of-pocket costs for prescription drugs are high, and can force individuals to forego much-needed medications, such as insulin. C.S.H.B. 18 seeks to ensure that qualifying Texans without health benefit plan coverage for a prescription drug benefit are not forced to do without prescribed medications due to cost. The bill seeks to establish a program for Texans without health benefit plan coverage for a prescription drug benefit through which those individuals will be able to purchase prescription drugs at the post-rebate price.

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. 18 amends the Health and Safety Code to enact provisions to be known as "Texas Cares" which provide for the development of a program that assists qualifying Texans without health benefit plan coverage for a prescription drug benefit to purchase prescription drugs at the post-rebate price.

Establishment and Administration of the Program

C.S.H.B. 18 requires the Health and Human Services Commission (HHSC) to develop and design a prescription drug savings program that partners with a pharmacy benefit manager to offer prescription drugs at a discounted rate to qualified individuals. The bill sets out program requirements related to providing the greatest value to those served by the program by considering the adequacy of the prescription drug formulary, costs to enrollees, and net cost to the state. The bill requires HHSC, in developing and implementing the program, to ensure that program benefits do not include prescription drugs to be used for the elective termination of a pregnancy.

C.S.H.B. 18 establishes HHSC's general powers and duties in relation to the program, which include requirements to do the following:

- oversee the implementation of the program and coordinate the activities of each state agency involved in the implementation of the program;
- design the program to be cost neutral by collecting prescription drug rebates after using money in the fund in amounts equal to the rebate amounts to purchase prescription drugs;

- develop procedures for accepting applications for program enrollment, including a process to determine eligibility, screening, and enrollment procedures that allow applicants to self attest to the extent authorized by federal law and resolve disputes related to eligibility determinations;
- publish online all average consumer costs for each prescription drug available through the program;
- integrate manufacturer and other third-party patient assistance programs as possible into the program, preferably by including links on the program's website, given those parties' consent; and
- ensure an adequate pharmacy network and give preference to conducting the program through a state pharmaceutical assistance program.

C.S.H.B. 18 establishes that HHSC is not required to enter into stand-alone contracts with respect to the program and may add the program, wholly or partly, to existing contracts to increase efficiency. The bill does require HHSC to conduct or contract to conduct a community outreach and education campaign to provide information on the program's availability to eligible individuals.

C.S.H.B. 18 requires HHSC to contract with a pharmacy benefit manager to provide discounted prescription drugs to program enrollees and requires HHSC to monitor the contracted pharmacy benefit manager through reporting or other methods to ensure performance under the contract and quality delivery of services. The contracted pharmacy benefit manager must report to HHSC, on request, information related to the program, such as rebate amounts, contracted prescription rates, and certain costs.

C.S.H.B. 18 authorizes HHSC to contract with a third-party administrator or other entity to perform any or all program functions for HHSC and also authorizes HHSC to delegate decisions about the program's policies to the administrator or other entity. The bill authorizes the contracted administrator or other entity to perform any tasks under the contract that would otherwise be performed by HHSC.

Program Funding

C.S.H.B. 18 provides for the establishment of a trust fund outside the state treasury for purposes of the program, contingent on the state receiving federal money that may be used for the program and the federal money being directed to be deposited to the credit of the fund as provided by law. The bill sets out the money comprising the fund and restricts the use of that money to administering the program and the provision of program services. The bill requires HHSC to administer the fund as trustee for the benefit of the program and authorizes HHSC to solicit and accept gifts, grants, and donations for the fund. HHSC must ensure that the money spent from the fund to assist enrollees in purchasing prescription drugs is cost neutral after collecting the prescription drug rebates under the program.

C.S.H.B. 18 prohibits HHSC from implementing the program without federal money having first been provided and deposited to the fund and requires HHSC to pay the program's one-time start-up costs exclusively with federal money in the fund. The bill requires HHSC to suspend the program on the fourth anniversary of the date it was established and to seek legislative approval to continue the program if the federal money in the fund available to be used for the program's one-time start-up costs is depleted and the ongoing costs of administering the program are not fully funded through enrollee cost sharing.

Program Eligibility

C.S.H.B. 18 makes U.S. citizens and lawful permanent residents who reside in Texas and are uninsured, as determined by HHSC, eligible for program benefits. The bill authorizes HHSC also to consider an applicant's financial vulnerability as an additional factor for determining program eligibility if it determines doing so necessary.

Cost Sharing

C.S.H.B. 18 requires HHSC, to the extent necessary, to require program enrollees to share the program costs, including by requiring enrollees to pay a copayment at the point of sale of a prescription drug. The bill requires HHSC to allow an enrollee to pay all or part of their share from any source the enrollee selects and to accept another assistance program that wholly or partly covers the enrollee share of the prescription drug cost.

C.S.H.B. 18 requires HHSC to require an enrollee to pay a copayment at the point of sale of an eligible prescription drug to compensate the pharmacy, pharmacy benefit manager, and HHSC for the ongoing costs of administering the program under the methodology determined by HHSC. If the total number of enrollees in the program allows for the payment amount not to exceed the lesser of $4 or 10 percent of the total amount charged at the point of sale, HHSC is to require enrollees to pay for the ongoing administration of the program.

Program Operations

C.S.H.B. 18 requires HHSC to approve program benefits and to ensure that the benefits comply with all applicable federal and state laws, rules, and regulations.

Reporting and Fraud Prevention

C.S.H.B. 18 requires a third-party administrator, pharmacy benefit manager, or any other entity with which HHSC contracts to report to HHSC on the benefits and services provided under the program. The bill requires HHSC to establish a procedure to monitor the provision of the benefits and services and requires the executive commissioner by rule to develop and implement fraud prevention and detection for pharmacy benefit managers, contracted third parties, and other entities involved in the program.

Program Reports

C.S.H.B. 18 requires HHSC, not later than December 1 of each year, beginning in 2022, to provide a written report to the governor, lieutenant governor, speaker of the house of representatives, and applicable standing legislative committees that includes the following information:

- a line-item list of all program administrative costs incurred by HHSC;
- the amount of the pharmacy benefit manager and third-party administrator fees;
- the aggregate amounts of rebates anticipated and received for the program; and
- other program expenditures as HHSC determines appropriate.

General Program Provisions

C.S.H.B. 18 provides for the construction and purpose of its provisions establishing the program and clarifies that it does not expand the Medicaid program. The bill requires the executive commissioner to adopt rules as necessary to implement those provisions and provides for the exercise of rulemaking authority by any other state agency designated by the executive commissioner.

Studies

C.S.H.B. 18 requires HHSC to conduct studies on the development and implementation of the program in providing the following to enrollees:

- post-rebate insulin; and

- the entire post-rebate formulary of prescription drugs.

HHSC must determine the effectiveness of the program in providing related services to uninsured individuals and any legislative recommendations for improvements to the program. Not later than February 14, 2023, HHSC must provide a written report of the results of the insulin study to the governor, lieutenant governor, speaker, and members of the applicable standing legislative committees that includes at least six months of information on use by and cost to enrollees for prescription insulin. Not later than February 14, 2025, HHSC must provide a written report on the results of the study on providing the post-rebate formulary to uninsured Texans that includes at least one year of information on use by and cost to enrollees for the entire formulary of post-rebate prescription drugs.

EFFECTIVE DATE

September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 18 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 does not include the following:

- a requirement for the executive commissioner to monitor applicable federal law and submit a report on any law, rule, or regulation found to be in conflict with the bill's provisions;
- an authorization for the executive commissioner to delegate rulemaking with respect to the program to another state agency;
- provisions providing for direct involvement in the implementation and administration of the program by the Texas Department of Insurance;
- a requirement for HHSC to maximize the use of private resources in administering the program and to ensure that money spent in that regard does not exceed limits imposed by the legislature;
- specific requirements for a pharmacy benefit manager to contract with HHSC to administer the program, including certification and licensure requirements;
- requirements for HHSC to provide payments under a contract to a contracted benefit manager;
- requirements for HHSC to conduct a review of each entity with which HHSC contracts with respect to the program and to ensure that each such contract is procured using a competitive procurement process; and
- a requirement for the executive commissioner to establish program eligibility levels in a manner consistent with applicable federal and state laws, rules, and regulations.

The substitute includes the following:

- a clarification that the creation of the program is not an expansion of Medicaid;
- a requirement for the program to be designed to be cost neutral through the use of program funds and prescription drug rebates;
- a requirement for the program's eligibility, screening, and enrollment procedures to allow applicants to self attest to the extent authorized by federal law;
- a requirement for HHSC to publish drug cost information online;
- provisions providing for the integration of manufacturer and other third-party patient assistance programs into the program;
- a requirement for HHSC to ensure the program has access to an adequate pharmacy network and to give preference to conducting the program using a state pharmaceutical assistance program;

- a provision specifying that HHSC is not required to enter into stand-alone contracts with respect to the program;
- an authorization for HHSC to add the program to existing contracts to increase efficiency;
- a requirement for a contracted pharmacy benefit manager to report to HHSC, on request, information related to the program;
- requirements regarding the manner in which a program enrollee may pay their portion of cost-sharing requirements;
- a requirement for enrollees to pay a copayment to cover the costs of administering the program under certain circumstances; and
- a requirement for HHSC to provide an annual written report on certain cost-related information for the program beginning in 2022.

The substitute replaces the prohibition against HHSC delegating decisions about the program's policies to a third-party administrator or other entity with an express authorization for HHSC to do so.

The substitute makes lawful permanent U.S. residents eligible to enroll in the program, rather than only U.S. citizens as in the original.

The substitute changes the manner in which the program is funded. Instead of establishing the Texas cares account as a dedicated account in the general revenue fund to be used as a source of appropriations to fund the program as in the original, the substitute provides for the establishment of a trust fund outside the state treasury in which federal funds received for the program are to be deposited. Additionally, with respect to the funding of the program, the substitute does the following:

- requires that federal money be used to cover the one-time start-up costs associated with the program;
- prohibits the program from being implemented altogether without the state having first received federal money for the program that is deposited into the trust fund; and
- requires HHSC to suspend the program on the fourth anniversary of its implementation if the money in the fund available to cover those start-up costs is depleted and enrollee cost sharing is not fully covering the costs of administering the program and seek legislative approval to continue the program, rather than providing for the termination of the program on a determination that the dedicated account lacks sufficient funding for its administration as in the original.

The substitute replaces the requirement for HHSC to conduct one general study on the development and implementation of the program with a requirement for HHSC to conduct one study on the provision of post-rebate insulin to program enrollees and another study on the provision of the entire post-rebate formulary of prescription drugs to enrollees. The substitute establishes reporting requirements with respect to the results of each such study.

The substitute revises the stated purpose of its provisions by specifying how the money from the fund is to be used and returned with respect to a prescription drug rebate at the point of sale.