SUBJECT: Creating a prescription drug savings program for uninsured individuals

COMMITTEE: Insurance — committee substitute recommended

VOTE: 9 ayes — Oliverson, Vo, J. González, Hull, Israel, Middleton, Paul, Romero, Sanford

0 nays

WITNESSES: For — Blake Hutson, AARP Texas; Veronica De La Garza, American Diabetes Association; Melodie Shrader, Pharmaceutical Care Management Association; Jamie Dudensing, Texas Association of Health Plans; David Balat, Texas Public Policy Foundation; Jason Ryan; (*Registered, but did not testify*: Michael Wright, American Pharmacies; Kandice Sanaie, Cigna; Dennis Borel, Coalition of Texans with Disabilities; Mark Vane, GoodRx; Myra Leo, Methodist Healthcare Ministries; Charles Miller, Texas 2036; Bill Hammond, Texas Employers for Insurance Reform; Cameron Duncan, Texas Hospital Association; Clayton Stewart, Texas Medical Association; Jill Sutton, Texas Osteopathic Medical Association; KeShana Odom, Texas Society of Health-System Pharmacists; Jennifer Allmon, The Texas Catholic Conference of Bishops; Andrew Smith, University Health)

Against — None

On — Debbie Garza, Texas Pharmacy Association; (*Registered, but did not testify*: Jenny Blakey, OPIC)

DIGEST: CSHB 18 would require the Health and Human Services Commission (HHSC) to develop and design a prescription drug savings program that partnered with a pharmacy benefit manager (PBM) to offer prescription drugs at a discounted rate to uninsured individuals. The program would use money from a new trust fund to pay an amount equal to the value of a prescription drug rebate at the point of sale and returning that rebate amount to the fund to ensure credited and paid amounts equaled each other.

The bill also would establish eligibility criteria and cost-sharing requirements for uninsured individuals in the program, specify the roles of HHSC and PBMs, and create a trust fund outside of the state treasury. "Uninsured individual" would mean an individual without health benefit plan coverage for a prescription drug benefit.

Eligibility and cost-sharing. An individual would be eligible for the drug savings program if the individual was: a resident of Texas; a citizen or lawful permanent resident of the United States; and uninsured, as determined by HHSC.

An applicant's financial vulnerability could be considered as an additional factor for program eligibility as determined by HHSC.

The bill would require HHSC to conduct or enter into a contract to do a community outreach and education campaign to provide information on the program's availability to eligible individuals.

Cost-sharing. To the extent necessary, the bill would require enrollees to share the cost of the program, including paying a copayment at the prescription drug's point of sale. HHSC would have to allow an enrollee to pay all or part of the enrollee's share from any source the enrollee selected and accept another assistance program if it wholly or partly covered the enrollee's share of the drug cost.

Under the bill, enrollees would have to pay the costs of the program's ongoing administration through an additional charge at an eligible prescription drug's point of sale only if the total number of enrollees allowed for the additional charge to not exceed the lesser of $4 or 10 percent of the total amount charged at the drug's point of sale. HHSC would require an enrollee to pay a copayment to compensate the pharmacy, PBM, and commission for the costs of administering the program.

Program design and benefits. The executive commissioner of HHSC would have to ensure the drug savings program was designed to provide the greatest possible value to eligible uninsured individuals, while considering the adequacy of the prescription drug formulary, net costs of the drugs to enrollees, cost to the state, and other factors determined by HHSC. The commission would have to:

- design the program to be cost neutral by collecting drug rebates after using money in the fund equal to rebate amounts to purchase prescription drugs;
- ensure the program had access to an adequate pharmacy network and give preference to conducting the program using a state pharmaceutical assistance program;
- ensure the program benefits did not include prescription drugs used for elective termination of a pregnancy; and
- develop procedures for accepting applications, including screening, enrollment, and determining and resolving disputes about eligibility.

The commission would have to ensure the program benefits complied with all applicable federal and state laws, rules, and regulations. HHSC also would have to publish on a website all average consumer costs for each prescription drug available through the discounted drug program.

Program suspension. On the fourth anniversary after the drug savings program was established, the bill would require HHSC to suspend the program and seek legislative approval to continue the program if available federal money for the one-time start-up costs was depleted and the ongoing costs of administering the program were not fully funded through enrollee cost sharing.

Contracts. The commission would not be required to enter into stand-alone contracts under the bill and could add the program, wholly or partly, to existing contracts to increase efficiency. The bill would allow HHSC to contract with a third-party administrator or other entity to perform any or all program functions and could delegate policy decisions to the administrator or other entity.

Pharmacy benefit managers. Under the bill, HHSC would have to contract with a pharmacy benefit manager (PBM) to provide discounted prescription drugs to program enrollees. The commission would monitor through reporting the PBM to ensure performance and quality delivery of services.

The contracted PBM would have to report certain information upon the commission's request, including rebate amounts, prescription drug rates contracted with pharmacies, administrative costs, and out-of-pocket costs paid by enrollees at the drug's point of sale.

Trust fund. The bill would establish a trust fund outside the state treasury only if the state received federal money that could be used for Health and Safety Code ch. 65 and that federal money was directed to be deposited to the credit of the fund as provided by law. The fund would include:

- gifts, grants, and donations received by the state for the fund's purpose;
- legislative appropriations of money;
- federal money available to this state by law; and
- interest, dividends, and other income of the fund.

The bill would prohibit HHSC from implementing the drug savings program unless federal money was provided to the state and by law made available for deposit to the trust fund. HHSC would have to ensure money spent from the trust fund to assist enrollees in purchasing prescription drugs was cost neutral after collecting the prescription drug rebates.

Under the bill, HHSC would administer the fund as trustee for the benefit of the drug savings program. Money in the fund could be used only to administer the program and provide program services. HHSC could solicit and accept gifts, grants, and donations for the fund.

The following provision would expire September 1, 2025: the bill would allow HHSC to pay the program's one-time start-up costs only with federal money in the trust fund.

Studies and reports. The bill would require HHSC to conduct two studies on the drug savings program's development and implementation regarding providing to enrollees post-rebate insulin and post-rebate formulary of prescription drugs. In conducting the studies, the commission would determine the program's effectiveness in providing insulin-related services to this state's uninsured individuals and any legislative recommendations.

By February 14, 2023, HHSC would have to provide a written report of the post-rebate insulin study to the governor, lieutenant governor, the House speaker, and relevant legislative committees. That study would have to include at least six months of information on use by and cost to enrollees for prescription insulin.

By February 14, 2025, HHSC would have to provide a written report on the study for post-rebate formulary of prescription drugs to the governor, lieutenant governor, the House speaker, and relevant legislative committees. That study would have to include at least one year of information on use by and cost to enrollees for all of the formulary of prescription drugs.

Other reports. A third-party administrator, PBM, or any other contracted entity would have to submit to HHSC a report that included the provided program benefits and services.

By December 1 of each year, HHSC would have to provide a written report to the governor, lieutenant governor, the House speaker, and relevant legislative committees, including:

- a line-item list of all program administrative costs incurred by HHSC;
- the amount of PBM and third-party administrator fees;

- the aggregate amounts of anticipated and received rebates; and
- other program expenditures.

This initial report would not be due until December 1, 2022.

Other provisions. The bill would not establish an entitlement to assistance in obtaining benefits for uninsured individuals nor would it expand the Medicaid program.

As soon as practicable after the bill's effective date, the executive commissioner of HHSC would have to adopt rules to implement provisions under Health and Safety Code ch. 65, including fraud prevention and detection for PBMs, contracted third parties, and other entities involved in the program.

The bill would take effect September 1, 2021.

SUPPORTERS SAY:

CSHB 18 would increase access to affordable prescription drugs for uninsured Texans by creating a drug savings program. As pharmaceutical drug prices continue to rise, high out-of-pocket costs for prescription drugs can lead to patients foregoing needed medication, like insulin, which can increase hospitalization rates. By creating a prescription drug savings program, the bill would ensure uninsured Texans had access to life-saving medications and could improve their medication adherence, leading to better health outcomes.

Additionally, establishing a trust fund outside of the state treasury would avoid using state funds to pay for the drug savings program and would not pass program costs on to employers. The bill would enable the state to leverage better rates for prescription drugs like insulin and pass along those savings to uninsured Texans.

The bill would provide rulemaking flexibility to the Health and Human Services Commission to adopt an appropriate payment structure while ensuring an adequate pharmacy network.

CRITICS SAY:

CSHB 18 should include stronger protections for pharmacies by requiring reimbursements from the pharmacy benefit manager (PBM) to reflect pharmacies' actual acquisition costs of prescription drugs and the cost to dispense those medications. PBMs regularly reimburse pharmacies below a pharmacy's cost to acquire and dispense prescription medications. Without clearer guidance on pharmacy reimbursements, the bill could create a payment structure that would not ensure rebate dollars were fully applied at the point of sale, potentially increasing a pharmacy's operational costs.