

BILL ANALYSIS

Senate Research Center
87R26973 SCL-F

C.S.H.B. 18
By: Oliverson et al. (Kolkhorst)
Health & Human Services
5/18/2021
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

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.

H.B. 18 seeks to ensure that qualifying Texans without health benefit plan coverage for a prescription drug benefit are not forced to go 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.

(Original Author's / Sponsor's Statement of Intent)

C.S.H.B. 18 amends current law relating to establishment of the prescription drug savings program for certain uninsured individuals.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 2 (Sections 65.003 and 65.203, Health and Safety Code) of this bill.

Rulemaking authority is expressly granted to any state agency designated by the executive commissioner of the Health and Human Services Commission in SECTION 6 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. SHORT TITLE. Requires that this Act be known as "Texas Cares."

SECTION 2. PRESCRIPTION DRUG SAVINGS PROGRAM. Amends Subtitle C, Title 2, Health and Safety Code, by adding Chapter 65, as follows:

CHAPTER 65. PRESCRIPTION DRUG SAVINGS PROGRAM FOR CERTAIN UNINSURED INDIVIDUALS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 65.001. DEFINITIONS. Defines "enrollee," "fund," "pharmacy benefit manager," "prescription drug," "program," and "uninsured individual."

Sec. 65.002. CONSTRUCTION OF CHAPTER; PURPOSE. (a) Provides that this chapter does not establish an entitlement to assistance in obtaining benefits for uninsured individuals.

(b) Provides that the purpose of this chapter is to establish a program to provide uninsured individuals access to prescription drug benefits using money from the 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 the amounts credited to the fund equal the amounts paid from the fund.

(c) Provides that this chapter does not expand the Medicaid program.

Sec. 65.003. RULES. Requires the executive commissioner of the Health and Human Services Commission (executive commissioner) to adopt rules as necessary to implement this chapter.

SUBCHAPTER B. ESTABLISHMENT AND ADMINISTRATION OF PRESCRIPTION DRUG SAVINGS PROGRAM

Sec. 65.051. ESTABLISHMENT OF PROGRAM. (a) Requires the Health and Human Services Commission (HHSC) to develop and design a prescription drug savings program (program) that partners with a pharmacy benefit manager to offer prescription drugs at a discounted rate to uninsured individuals.

(b) Requires HHSC, in developing and implementing the program, to ensure the program benefits do not include prescription drugs used for the elective termination of a pregnancy.

(c) Requires the executive commissioner to ensure the program is designed to provide the greatest possible value to uninsured individuals served by the program, while considering the adequacy of the prescription drug formulary, net costs of the drugs to enrollees, cost to the state, and other important factors determined by HHSC.

Sec. 65.052. GENERAL POWERS AND DUTIES OF COMMISSION RELATED TO PROGRAM. (a) Requires HHSC to oversee the implementation of the program and coordinate the activities of each state agency involved in that implementation.

(b) Requires HHSC to 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.

(c) Requires HHSC to 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 to resolve disputes related to eligibility determinations.

(d) Requires HHSC to publish on an Internet website all average consumer costs for each prescription drug available through the program.

(e) Requires HHSC and the contracted pharmacy benefit manager to integrate manufacturer and other third-party patient assistance programs into the program to the extent feasible. Authorizes a manufacturer or other third party to decline to link the manufacturer's or third party's patient assistance program to the program. Requires HHSC to give preference to integrating patient assistance programs by listing information on those patient assistance programs in a central location on the Internet website described by Subsection (d) that directs patients to those patient assistance programs as appropriate.

(f) Requires HHSC to ensure the program has access to an adequate pharmacy network and give preference to conducting the program using a state pharmaceutical assistance program.

(g) Provides that HHSC is not required to enter into stand-alone contracts under this chapter. Authorizes HHSC to add the program, wholly or partly, to existing contracts to increase efficiency.

Sec. 65.053. PHARMACY BENEFIT MANAGER CONTRACT, MONITORING, AND REPORTING REQUIREMENTS. (a) Requires HHSC to contract with a pharmacy benefit manager to provide discounted prescription drugs to enrollees under the program.

(b) Requires HHSC to monitor through reporting or other methods the contracted pharmacy benefit manager to ensure performance under the contract and quality delivery of services.

(c) Requires the contracted pharmacy benefit manager to report to HHSC on HHSC's request information related to the program, including information on rebate amounts, prescription drug rates contracted with pharmacies, administrative costs, and out-of-pocket costs paid by enrollees at the point of sale of the prescription drugs.

Sec. 65.054. CONTRACT FUNCTIONS. (a) Authorizes HHSC to contract with a third-party administrator or other entity to perform any or all program functions for HHSC under this chapter.

(b) Authorizes a third-party administrator or other entity to perform tasks under a contract entered into under Subsection (a) that would otherwise be performed by HHSC.

Sec. 65.055. COMMUNITY OUTREACH CAMPAIGN. Requires HHSC to conduct or contract to conduct a community outreach and education campaign in the form and manner determined by HHSC to provide information on the program's availability to eligible individuals.

SUBCHAPTER C. TRUST FUND; PROGRAM SUSPENSION

Sec. 65.101. ESTABLISHMENT OF FUND. (a) Provides that a trust fund is established outside the state treasury for the purposes of this chapter.

(b) Provides that the fund consists of gifts, grants, and donations received by this state for the purposes of the fund; legislative appropriations of money for the purposes of this chapter; federal money available to this state that by law is authorized to be used for the purposes of this chapter; and interest, dividends, and other income of the fund.

(c) Requires HHSC to administer the fund as trustee for the benefit of the program established by this chapter.

(d) Authorizes money in the fund to be used only to administer the program and provide program services.

(e) Requires HHSC to ensure money spent from the fund to assist enrollees in purchasing prescription drugs is cost neutral after collecting the prescription drug rebates under the program.

(f) Authorizes HHSC to solicit and accept gifts, grants, and donations for the fund.

Sec. 65.102. SUFFICIENT FUNDING REQUIRED. Provides that notwithstanding any other provision of this chapter, HHSC is not required to implement the program unless money is provided and by law made available for deposit to the credit of the fund.

Sec. 65.103. SUSPENSION OF PROGRAM. Requires HHSC, on the fourth anniversary of the date the program is established, to suspend the program and seek legislative approval to continue the program unless the ongoing costs of administering the program are fully funded through enrollee cost sharing.

SUBCHAPTER D. PROGRAM ELIGIBILITY AND ENROLLEE REQUIREMENTS

Sec. 65.151. ELIGIBILITY CRITERIA. (a) Provides that except as provided by Subsection (b), an individual is eligible for benefits under the program if the individual is a resident of this state, a citizen or lawful permanent resident of the United States, and uninsured, as determined by HHSC.

(b) Authorizes HHSC, if HHSC determines necessary, to consider an applicant's financial vulnerability as an additional factor for determining program eligibility.

Sec. 65.152. COST SHARING. (a) Requires HHSC, to the extent necessary, to require enrollees to share the cost of the program, including requiring enrollees to pay a copayment at the point of sale of a prescription drug.

(b) Requires HHSC to allow an enrollee to pay all or part of the enrollee's share from any source the enrollee selects, and to accept another assistance program if that assistance program wholly or partly covers the enrollee share of the prescription drug cost.

(c) Requires HHSC to require an enrollee to pay a copayment to compensate the pharmacy, pharmacy benefit manager, and HHSC for the costs of administering the program in accordance with Subsection (d) and under the methodology determined by HHSC.

(d) Requires enrollees to pay the costs of ongoing administration of the program through an additional charge at the point of sale of an eligible prescription drug only if the total number of enrollees in the program allows for the additional charge to be an amount not to exceed the lesser of an amount similar to the amount charged for a prescription drug in other state pharmaceutical assistance programs administered by HHSC or 10 percent of the total amount charged at the point of sale for the prescription drug.

SUBCHAPTER E. OPERATION OF PROGRAM

Sec. 65.201. PROGRAM BENEFITS. Requires HHSC to approve program benefits offered under this chapter. Requires HHSC to ensure the benefits comply with all applicable federal and state laws, rules, and regulations.

Sec. 65.202. REPORTING. (a) Requires a third-party administrator, pharmacy benefit manager, or any other entity HHSC contracts with under Section 65.054 to report to HHSC in the form and manner prescribed by HHSC on the benefits and services provided under the program.

(b) Requires HHSC to establish a procedure to monitor the provision of benefits and services under this chapter.

Sec. 65.203. FRAUD PREVENTION. 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.

Sec. 65.204. ANNUAL PROGRAM REPORTS. Requires HHSC, not later than December 1 of each year, to provide a written report to the governor, lieutenant governor, speaker of the Texas House of Representatives (house), and standing committees of the legislature with primary jurisdiction over the program. Requires that the report include 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.

SECTION 3. INSULIN STUDY. (a) Defines "commission."

(b) Requires HHSC to conduct a study on the development and implementation of the program established by Chapter 65, Health and Safety Code, as added by this Act, in providing post-rebate insulin to enrollees. Requires HHSC to determine the effectiveness of the program in providing insulin-related services to uninsured individuals in this state and any legislative recommendations for improvements to the program.

(c) Requires HHSC, not later than February 14, 2023, to provide a written report of the results of the study conducted under Subsection (b) of this section to the governor, lieutenant governor, speaker of the house, and members of the standing committees of the legislature with primary jurisdiction over HHSC. Requires that the study include at least six months of information on use by and cost to enrollees for prescription insulin.

SECTION 4. GENERAL STUDY. (a) Defines "commission."

(b) Requires HHSC to conduct a study on the development and implementation of the program established by Chapter 65, Health and Safety Code, as added by this Act, in providing to enrollees all of the post-rebate formulary of prescription drugs. Requires HHSC to determine the effectiveness of the program in providing prescription drug-related services to uninsured individuals in this state and any legislative recommendations for improvements to the program.

(c) Requires HHSC, not later than February 14, 2025, to provide a written report on the results of the study conducted under Subsection (b) of this section to the governor, lieutenant governor, speaker of the house, and standing committees of the legislature with primary jurisdiction over HHSC. Requires that the study include at least one year of information on use by and cost to enrollees for all of the formulary of prescription drugs.

SECTION 5. TRANSITION. (a) Provides that HHSC is not required to submit the initial report under Section 65.204, Health and Safety Code, as added by this Act, until December 1, 2022.

(b) Provides that HHSC is required to implement a provision of this Act only if the legislature appropriates money specifically for that purpose. Provides that if the legislature does not appropriate money specifically for that purpose, HHSC is authorized, but is not required, to implement a provision of this Act using other appropriations available for that purpose.

SECTION 6. RULES. Requires the executive commissioner and any other state agency designated by the executive commissioner, as soon as practicable after the effective date of this Act, to adopt rules necessary to implement Chapter 65, Health and Safety Code, as added by this Act.

SECTION 7. EFFECTIVE DATE. Effective date: September 1, 2021.