

By Representatives Argenziano and Byrd

1 A bill to be entitled
2 An act relating to pharmacy benefits;
3 establishing a pharmacy benefit program for
4 certain low-income persons, under the Agency
5 for Health Care Administration; providing
6 eligibility; providing program parameters;
7 providing for processing and payment of claims;
8 providing requirements for participation by
9 pharmaceutical manufacturers; providing for the
10 purchase of medications from foreign sources;
11 providing rulemaking authority; providing for a
12 Medicare prescription discount as a condition
13 for pharmacy participation in the pharmacy
14 benefit program and the Medicaid program;
15 creating s. 430.072, F.S.; creating the
16 pharmacy benefit counseling and assistance
17 program, under the Department of Elderly
18 Affairs; providing for delivery of pharmacy
19 benefit counseling to elderly persons;
20 providing eligibility; providing for funding;
21 providing for staff assistance from the Agency
22 for Health Care Administration and the
23 Department of Health; providing rulemaking
24 authority; providing for aggregation of the
25 state purchase of prescription drugs for a
26 described coverage group; authorizing a
27 management agreement for program development
28 and management services; providing a procedure
29 for the selection of managing entities;
30 requiring a report; establishing the Commission
31 on Pharmaceutical Benefits for Elderly and

1 Disabled Persons; providing commission duties;
2 providing membership; providing for use of
3 actuarial resources of the Division of State
4 Insurance of the Department of Management
5 Services; authorizing employment of an
6 independent actuary; providing for funding;
7 requiring a report and recommendations;
8 directing the agency to pursue certain federal
9 waivers to obtain funding for the pharmacy
10 benefit program and the pharmacy benefit
11 counseling and assistance program; providing
12 appropriations; providing an effective date.

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14 WHEREAS, numerous studies have concluded that many
15 older Americans pay high prices for prescription drugs and
16 have a difficult time paying for the drugs they need, and

17 WHEREAS, a recent Congressional study found that older
18 Americans and others who pay for their own drugs are charged
19 far more for their prescription drugs than are the drug
20 companies' most favored customers, such as large insurance
21 companies and health maintenance organizations, and

22 WHEREAS, according to the National Institute on Aging,
23 "as a group, older people tend to have more long-term
24 illnesses--such as arthritis, diabetes, high blood pressure,
25 and heart disease--than do younger people," and

26 WHEREAS, older Americans spend almost three times as
27 much of their income (21 percent) on health care as those
28 under the age of 65 (8 percent), and more than three-quarters
29 of Americans age 65 and over are taking prescription drugs,
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1 WHEREAS, although the elderly have the greatest need
2 for prescription drugs, they often have the most inadequate
3 insurance coverage to pay for the cost of these drugs, and
4 Medicare generally does not cover prescription drugs, and

5 WHEREAS, although Medicare beneficiaries can purchase
6 supplemental "Medigap" insurance privately, these policies are
7 often prohibitively expensive or inadequate, and

8 WHEREAS, the high cost of prescription drugs and the
9 lack of insurance coverage directly affect the health and
10 welfare of older Americans, with a significant number of older
11 Americans forced to choose between buying food and buying
12 medicine, and

13 WHEREAS, it is the intent of the Legislature to assist
14 needy elderly persons and their physicians and families in
15 obtaining the necessary prescription medications ordered for
16 such elderly persons by their physicians, NOW, THEREFORE,

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18 Be It Enacted by the Legislature of the State of Florida:

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20 Section 1. Pharmacy benefit program.--

21 (1) INTENT.--It is the intent of the Legislature to
22 initiate a pharmacy benefit program for those persons with
23 very low incomes who are most in need. It is further the
24 intent of the Legislature to attempt to leverage maximum
25 pharmaceutical manufacturer participation in this program.

26 (2) PROGRAM ESTABLISHED.--There is established a
27 pharmacy benefit program which is designed to provide
28 prescription drug coverage to a limited group of most needy
29 individuals. The program is to be administered by the Agency
30 for Health Care Administration, under the authority provided
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1 in s. 409.914(1), Florida Statutes, in conjunction with the
2 Department of Elderly Affairs and the Department of Health.

3 (3) ELIGIBILITY.--Eligibility for the program is
4 limited to those individuals who qualify for limited
5 assistance under the Florida Medicaid program as a result of
6 being dually eligible for both Medicare and Medicaid, but
7 whose limited assistance does not include any pharmacy
8 benefit. Specifically eligible are the following low-income
9 senior citizens:

10 (a) Those with incomes between 90 percent and 100
11 percent of the federal poverty level, the so-called qualified
12 Medicare beneficiaries.

13 (b) Those with incomes between 100 percent and 120
14 percent of the federal poverty level, the so-called specified
15 low-income Medicare beneficiaries.

16 (4) PROGRAM PARAMETERS.--

17 (a) The program shall make available the same
18 formulary of prescription medications that is made available
19 to Medicaid recipients. Medications shall be provided in the
20 generic equivalent if a generic equivalent exists, except when
21 a brand name medication is available at a cost lower than its
22 generic equivalent or when a physician has determined that the
23 brand name medication is necessary to achieve the desired
24 therapeutic effect and the agency approves.

25 (b) The agency shall, by rule, determine an
26 eligibility process, a 20-percent copayment requirement, an
27 annual limit of \$1,000 per beneficiary, and other program
28 parameters as necessary.

29 (c) The Medicaid fiscal agent or a separately
30 contracted pharmacy benefits manager, or both, shall be used
31 for the processing and payment of claims.

1 (5) PHARMACEUTICAL MANUFACTURER PARTICIPATION.--In
2 order for a drug product to be covered under this program, the
3 product's manufacturer shall:

4 (a) Provide the maximum rebate to the state as
5 authorized in federal Medicaid regulations or other applicable
6 federal drug regulations or guidelines.

7 (b) Make the drug product available to the program for
8 the best price that the manufacturer makes the drug product
9 available under any purchasing arrangement.

10 (c) Agree to be an active participant in Florida with
11 the Indigent Drug Program of the Pharmaceutical Research and
12 Manufacturers of America and the pharmacy benefit counseling
13 and assistance program as established under s. 430.072,
14 Florida Statutes.

15 (6) PURCHASE OF FOREIGN MEDICATIONS.--The agency may
16 petition the United States Food and Drug Administration for
17 approval to purchase otherwise prohibited medications from
18 foreign sources for purposes of distribution under this
19 program.

20 (7) RULES.--The agency is authorized to adopt rules to
21 implement the provisions of this section.

22 Section 2. Medicare prescription discount.--As a
23 condition for participation in either the pharmacy benefit
24 program established in section 1 or the Florida Medicaid
25 program, a pharmacy must agree that the charge to any Medicare
26 beneficiary showing a Medicare card when presenting a
27 prescription shall be equal to the amount paid to that
28 pharmacy for filling a prescription under the Florida Medicaid
29 program.

30 Section 3. Section 430.072, Florida Statutes, is
31 created to read:

1 430.072 Pharmacy benefit counseling and assistance
2 program.--

3 (1) There is created within the Office of Volunteer
4 Community Service the pharmacy benefit counseling and
5 assistance program. The program is created to assist elderly
6 persons in obtaining prescription medications which they would
7 otherwise not be able to afford to purchase. The Office of
8 Volunteer Community Service shall also implement, monitor, and
9 evaluate the delivery of pharmacy benefit counseling services
10 under this program. The office shall:

11 (a) Provide the services through a multigenerational
12 corps of volunteers, including, but not limited to, pharmacy
13 students, retired professional pharmacists, other health
14 professionals, and other suitably trained persons.

15 (b) Work collaboratively with local, state, and
16 national organizations to promote the use of volunteers to
17 offer counseling services under this program, including, but
18 not limited to, the Pharmaceutical Research and Manufacturers
19 of America, to persons who are unable to afford necessary
20 prescription medications.

21 (c) Encourage contributions and grants through public
22 and private sources to promote the delivery of pharmacy
23 benefit counseling and access to necessary prescription
24 medications for elderly individuals qualified under this
25 program.

26 (2) To receive assistance from the pharmacy benefit
27 counseling and assistance program, the family unit must be
28 assessed according to the following guidelines developed by
29 the department to determine the need for pharmacy services.
30 This assessment must determine, at a minimum, that:

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1 (a) The family unit is unable to pay for required
2 prescription medications without jeopardizing other basic
3 needs, including, but not limited to, food, shelter, and
4 medications.

5 (b) The elderly individual for whom the family unit is
6 caring is 60 years of age or older and requires the use of
7 maintenance prescription medications to remain in the home,
8 and without the prescribed medication the elderly individual
9 would need to move to an institutional setting.

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11 For purposes of this section, "family unit" means one or more
12 individuals whose primary residence is with a homebound
13 elderly individual specifically for the purpose of providing
14 care for that homebound elderly individual. The family unit
15 does not necessarily need to be related by blood or marriage
16 to the homebound elderly individual.

17 (3) A family unit that receives services from the
18 pharmacy benefit counseling and assistance program is not
19 excluded from receiving assistance from other governmental
20 programs.

21 (4) The department shall accept and encourage
22 contributions and grants through public and private sources to
23 promote the delivery of pharmacy benefit counseling services
24 to assist family units providing care for homebound elderly
25 individuals.

26 (5) The Director of Health Care Administration and the
27 Secretary of Health shall assign staff with expertise in the
28 areas of pharmacy benefit medication management or chronic
29 disease management to assist the Office of Volunteer Community
30 Service in establishing and operating this program. The Agency
31 for Health Care Administration shall assign a professional

1 pharmacist licensed pursuant to chapter 465 to the Office of
2 Volunteer Community Service to assist in establishing and
3 operating this program.

4 (6) The department shall adopt rules pursuant to ss.
5 120.536(1) and 120.54 to implement the provisions of this
6 section.

7 Section 4. Aggregation of the purchase of prescription
8 drugs by the state.--

9 (1) Notwithstanding any other general or special law
10 to the contrary, the Director of Health Care Administration,
11 in consultation with the Secretary of Health, the Secretary of
12 Elderly Affairs, and the director of the Division of State
13 Group Insurance of the Department of Management Services
14 shall, within 60 days after the effective date of this act,
15 develop a program to aggregate the purchase of prescription
16 drugs for a coverage group which shall include the following
17 individuals who are residents of the state:

18 (a) Participants in the pharmacy benefit program
19 established in section 1.

20 (b) Persons covered under the state group insurance
21 program pursuant to s. 110.123, Florida Statutes.

22 (c) Enrollees in the Florida Medicaid program under
23 chapter 409, Florida Statutes.

24 (d) Persons receiving pharmacy benefits under the
25 Department of Corrections.

26 (e) Persons receiving pharmacy benefits through the
27 Department of Health.

28 (f) Persons receiving pharmacy benefits through the
29 institutional programs of the Department of Children and
30 Family Services.

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1 (g) Any other persons on whose behalf the state
2 subsidizes, in whole or in part, the purchase of prescription
3 drug benefits.

4 (2) In order to ensure the timely performance of his
5 or her obligations under this section, the Director of Health
6 Care Administration may enter into an agreement with one or
7 more not-for-profit entities for the purpose of developing and
8 managing this program. The director shall prepare a request
9 for proposals for the purpose of selecting the entity or
10 entities which shall provide prescription drug benefit
11 management services to members of the coverage group. The
12 selection process shall include criteria designed to select
13 that entity best able to provide a prescription drug benefit
14 program for the coverage group in a way that maximizes savings
15 for the state and participants without reducing the quality of
16 any prescription drug benefits now being provided to persons
17 included in the coverage group.

18 (3) Prior to accepting a proposal for the provision of
19 prescription drug benefit management services, the director
20 shall make a determination in writing that the proposal
21 maximizes savings to the state, or provides other substantial
22 public benefits, in a way that does not reduce the quality of
23 existing prescription drug services for any persons included
24 in the coverage group. The director shall submit a report
25 containing his or her selection, along with the basis
26 therefor, at least 30 days before entering into the management
27 agreement, to the Speaker of the House of Representatives and
28 the President of the Senate. The accepted proposal shall not
29 terminate any contract currently in existence with any agency
30 or program affected hereunder which cannot be favorably
31 renegotiated.

1 Section 5. Commission on Pharmaceutical Benefits for
2 Elderly and Disabled Persons.--

3 (1) There is established the Commission on
4 Pharmaceutical Benefits for Elderly and Disabled Persons, to
5 study and develop an ongoing, actuarially sound pharmaceutical
6 benefits program to provide prescription drug coverage for
7 certain low-income persons who are 65 years of age and older
8 and certain persons with disabilities. The commission shall
9 address, through its study, methods for operating the
10 pharmaceutical benefits program. The commission shall examine
11 the following eligibility requirements and program features of
12 a pharmaceutical benefits program:

13 (a) Eligibility to include individuals who are 65
14 years of age and older and persons with disabilities.

15 (b) Required exhaustion of any other pharmaceutical
16 benefits or coverage.

17 (c) Deductibles, which may be on a sliding scale.

18 (d) Premiums on a sliding scale based on a recipient's
19 income.

20 (e) Incentives for each eligible person to apply for
21 benefits at the age of 65 and a penalty for later enrollment.

22 (f) Copayment requirements.

23 (2) In developing the program, the commission shall
24 also study relevant issues, including, but not limited to, the
25 following:

26 (a) The types and costs of all outpatient prescription
27 drug coverage, including Medicare supplemental policies and
28 Medicare health maintenance organization plans, currently
29 operating and available to the elderly and disabled in the
30 state, and the extent of coverage or benefits that each plan
31 provides to the policyholder. Study of this issue shall

1 include, but not be limited to, Medicare deductibles,
2 coinsurance amounts, copayments or premiums required per plan,
3 benefit limits per plan, legend and nonlegend drugs covered
4 per plan, and all other aspects of member benefits and
5 regulations that the commission deems relevant for study.

6 (b) The impact of public financing of prescription
7 drug benefits on the continued availability of private
8 insurance prescription drug coverage in the state.

9 (c) Possible funding sources for the pharmaceutical
10 benefits program through publicly financed or subsidized
11 sources, including, but not limited to, savings from the
12 General Revenue Fund, contributions by the Federal Government,
13 and tobacco settlement payments.

14 (d) The potential fiscal impact of the commission's
15 recommendations on state general revenue expenditures.

16 (e) The implications of the commission's
17 recommendations with regard to continuation or revision of the
18 pharmacy benefit program established in section 1.

19 (3) The Commission on Pharmaceutical Benefits for
20 Elderly and Disabled Persons shall consist of 18 members as
21 follows: the chairs of the Committee on Health, Aging, and
22 Long-Term Care and the Committee on Fiscal Policy in the
23 Senate and the chairs of the Committee on Elder Affairs and
24 Long-Term Care, the Committee on Health Care Services, and the
25 Committee on Health and Human Services Appropriations in the
26 House of Representatives; the Director of Health Care
27 Administration; the Secretary of Health; the Secretary of
28 Elderly Affairs; the director of the Division of State Group
29 Insurance of the Department of Management Services; the
30 director of the Medicaid program; the chair of the Board of
31 Pharmacy; a representative of the American Association of

1 Retired Persons; a representative of the Florida Mental Health
2 Association; a representative of the Florida Association of
3 Health Maintenance Organizations; a representative of the
4 Advocacy Center for Persons with Disabilities, Inc.; and three
5 persons appointed by the Governor, one of whom shall be from
6 an institution of higher education and shall have expertise in
7 public health or health care economics, one of whom shall
8 represent the pharmaceutical industry, and one of whom shall
9 be an actuary. The commission shall elect a chair from among
10 its membership.

11 (4) The commission shall use the actuarial resources
12 of the Division of State Group Insurance to the extent
13 possible, but may expend up to \$50,000, to be allocated from
14 the General Revenue Fund, for the services of an actuary not
15 employed by the state to provide financial and technical
16 assistance. Actuarial consultants shall provide the commission
17 with detailed information, including, but not limited to, the
18 following:

19 (a) An estimate of the total population of elderly
20 persons and persons with disabilities eligible to participate
21 in the program, delineated by income levels, as individuals
22 and as households.

23 (b) An analysis of utilization and cost-per-recipient
24 patterns projected for elderly persons and persons with
25 disabilities.

26 (c) The projected cost of providing full or partial
27 subsidies on a sliding scale to certain low-income
28 participants.

29 (5) The commission shall submit a report with
30 recommendations for a proposed program not later than December
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1 29, 2000, to the Speaker of the House of Representatives and
2 the President of the Senate.

3 Section 6. The Agency for Health Care Administration
4 shall pursue with the federal Health Care Financing
5 Administration any possible waivers that might be used to
6 obtain federal financial participation for any aspects of the
7 pharmacy benefit program or the pharmacy benefit counseling
8 and assistance program as created by this act.

9 Section 7. There is hereby appropriated from the
10 General Revenue Fund to the Agency for Health Care
11 Administration the sum of \$40 million to fund the pharmacy
12 benefit program established under this act.

13 Section 8. There is hereby appropriated from the
14 General Revenue Fund to the Division of State Group Insurance
15 of the Department of Management Services the sum of \$50,000
16 for actuarial services to assist the Commission on
17 Pharmaceutical Benefits for Elderly and Disabled Persons.

18 Section 9. This act shall take effect July 1, 2000.
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HOUSE SUMMARY

Establishes a pharmacy benefit program to provide prescription medication coverage for certain Medicare beneficiaries whose assistance does not include any pharmacy benefit. Provides for administration by the Agency for Health Care Administration, in conjunction with the Departments of Health and Elderly Affairs. Provides for program parameters and provides requirements for participation by pharmaceutical manufacturers. Provides for a Medicare prescription discount as a condition for pharmacy participation in the program or in the Medicaid program. Provides an appropriation.

Creates a pharmacy benefit counseling and assistance program to assist certain elderly individuals in obtaining necessary prescription medications. Provides for administration by the Office of Volunteer Community Service of the Department of Elderly Affairs, with certain staff assistance from the Agency for Health Care Administration and the Department of Health. Provides for funding through public and private grants and contributions. Authorizes pursuit of federal waivers to obtain funding for the pharmacy benefit program and the pharmacy benefit counseling and assistance program.

Provides for aggregation of the purchase of prescription drugs by the state for participants in the pharmacy benefit program, state employees, Medicaid recipients, and other persons receiving pharmacy benefits through state agencies or programs. Authorizes the Director of Health Care Administration to enter into an agreement with one or more not-for-profit entities for development and management of this program. Establishes the Commission on Pharmaceutical Benefits for Elderly and Disabled Persons to study and develop a comprehensive, actuarially sound pharmaceutical benefits program for the elderly and disabled. Provides for actuarial consultants. Provides an appropriation.