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HOUSE OF REPRESENTATIVES
COMMITTEE ON
HEALTH PROMOTION
ANALYSIS

BILL #: HB 155

RELATING TO: Medicare Prescription Discount Program

SPONSOR(S): Representative(s) Slosberg

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

(1) HEALTH PROMOTION
(2) FISCAL POLICY & RESOURCES
(3) HEALTH & HUMAN SERVICES APPROPRIATIONS
(4) COUNCIL FOR HEALTHY COMMUNITIES
(5)

I. SUMMARY:

HB 155 modifies the discount that must be offered to Florida-resident, Medicare recipients when having a prescription filled at a pharmacy participating in the Medicaid program or the pharmaceutical expense assistance program as follows: instead of the average wholesale price minus 9 percent, plus a dispensing fee of $4.50, the pharmacy must fill the prescription at a price no greater than the cost of ingredients equal to 20 percent below the best price at which the pharmacy, or its parent company, makes the ingredients available under any purchasing arrangement, plus a dispensing fee of $4.50.

The bill's effective date is July 1, 2001.

The bill will have an unknown fiscal impact on participating pharmacies, and an unknown fiscal impact on Medicare beneficiaries.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1.	Less Government	Yes []	No []	N/A [x]
2.	Lower Taxes	Yes []	No []	N/A [x]
3.	Individual Freedom	Yes []	No []	N/A []
4.	Personal Responsibility	Yes []	No []	N/A [x]
5.	Family Empowerment	Yes []	No []	N/A [x]

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

The Florida Prescription Affordability Act for Seniors

Chapter 2000-254, Laws of Florida, created the "Prescription Affordability Act for Seniors." The following is a summary of the two parts of this enactment.

Pharmaceutical Expense Assistance Program

Codified as s. 409.9065, F.S., the act created a pharmaceutical expense assistance program for low-income individuals who qualify for limited assistance under Medicaid as a result of being dually eligible for both Medicaid and Medicare, but whose limited assistance or Medicare coverage does not include any pharmacy benefit. Specifically eligible are low-income senior citizens who:

- Are Florida residents age 65 and over;
- Have an income between 90 and 120 percent of the federal poverty level [a range from $7,731 to $10,308 for individuals and from $10,449 to $13,932 for family size of two, as of February 16, 2001];
- Are eligible for both Medicare and Medicaid;
- Are not enrolled in a Medicare health maintenance organization that provides a pharmacy benefit; and
- Request to be enrolled in the program.

Medications covered under the program are those covered under the Medicaid program. Monthly benefit payments are limited to $80 per program participant, with a 10 percent coinsurance payment for each prescription purchased through the program.

The program is administered by the Agency for Health Care Administration (AHCA), in consultation with the Department of Elderly Affairs. A single page application has been developed for the program. By rule, AHCA is required to establish eligibility requirements, limits on participation, benefit limitations, a requirement for generic drug substitution, and other program parameters comparable to those of the Medicaid program. By January 1 of each year, AHCA is to report to the Legislature on specified aspects of the operation of the program. The act states that the program is not an entitlement.

In order for a drug product to be covered under the program, the product's manufacturer must provide a rebate equal to the rebate required by Medicaid and make the drug available to the

program for the best price the manufacturer makes the drug available in the Medicaid program. Reimbursements to pharmacies under the program are to be equivalent to reimbursements under the Medicaid program.

The act appropriated $15 million from the General Revenue Fund to AHCA to implement the pharmaceutical expense assistance program effective January 1, 2001. Rebates collected are to be used to help finance the pharmaceutical expense assistance program. Additionally, $250,000 was appropriated from the General Revenue Fund to AHCA to administer the pharmaceutical expense assistance program. It should be noted that the Governor's Legislative Budget Request includes slightly more than $30 million to provide for annualized funding for this program.

Medicare Prescription Discount Program

Codified as s. 409.9066, F.S., the act also required that, as a condition of participation in the Medicaid program or the pharmaceutical expense assistance program, a pharmacy must agree to charge to any individual who is a Medicare beneficiary and who is a Florida resident presenting a Medicare card, when presenting a prescription, a price no greater than the cost of ingredients equal to the average wholesale price minus 9 percent, and a dispensing fee of $4.50. In lieu of this requirement, and as a condition of participation in the Medicaid program or the pharmaceutical expense assistance program, a pharmacy must agree to provide a private, voluntary prescription discount program to state residents who are Medicare beneficiaries or accept a private voluntary discount prescription program from state residents who are Medicare beneficiaries. These discounts must be at least as great as discounts provided under this program.

Status of Pharmaceutical Assistance Programs in Other States

The number of states implementing programs or policies dealing with pharmaceutical assistance to the elderly has continued to increase as the price of prescription drugs has soared. During the past two years, 35 state legislatures have considered the issue. By January 2001, 26 states had passed pharmaceutical assistance laws or implemented non-legislative executive initiatives. Twenty-four of the state programs were in operation by January 2001 with Kansas and Iowa planning implementation in July 2001. Several of the state programs in operation were implemented during the period 1999-2001. The 24 states and their dates of implementation are: Maine and New Jersey (1975); Maryland (1979); Delaware (1981); Pennsylvania (1984); Illinois and Rhode Island (1985); Connecticut (1986); New York (1987); Wyoming (1988); Vermont (1989); Michigan (1994); Massachusetts (1996); California, Minnesota, Missouri, and Nevada (1999); Indiana, North Carolina, New Hampshire, and West Virginia (2000); and Florida, South Carolina, and Washington (2001).

The laws and initiatives relating to pharmaceutical assistance have attempted to address the problem of rapidly escalating prescription drug prices in a variety of ways. Twenty states provide a direct subsidy using state funds, one state provides a year-end tax credit, and five states offer a discount (no subsidy) for eligible senior citizens. Some states have attempted to include more people by adjusting Medicaid eligibility. The trend is toward statewide programs designed to reduce drug prices for broader groups of consumers. [Compiled from information available at www.ncsl.org/programs/health/drugdisc.htm]

General Background

Outpatient prescription drugs, which are not covered by Medicare, represent a substantial out-of-pocket burden for many elderly persons. This lack of prescription drug coverage is often cited as a major shortcoming of the Medicare program, the federal health insurance program for older and disabled Americans.

Florida is home to approximately 2.7 million elderly Medicare beneficiaries. Over 90 percent of these elders take one prescribed drug daily, while the average takes 7 different medications. There is a direct correlation between advancing age and the number of prescription drugs taken. Although Americans over 65 make up only 12 percent of the population, they take 25 percent of all prescribed drugs sold in the United States. According to the Department of Elderly Affairs, over 15 percent of older people keep their expenses down by taking less medication than prescribed, or by going without their medications altogether. This strategy compromises the effectiveness of controlling the progression of chronic disease, resulting in a greater likelihood that these elders will use hospital emergency rooms or other urgent care.

Approximately 65 percent of non-institutionalized Medicare beneficiaries have some form of prescription drug coverage; however, the level of this coverage varies. Most (59 percent) of these individuals with prescription drug coverage receive their drug coverage through private supplemental insurance, either through employer-sponsored plans or individually purchased private policies. About one-fifth of Medicare beneficiaries with prescription drug coverage are members of Medicare HMOs, which, in an effort to attract seniors, have offered various levels of prescription drug coverage at no additional cost to the enrollee. The scope and availability of Medicare HMO prescription drug coverage varies widely within and across market areas. A number of HMO plans responded to the federal rate changes under the Balanced Budget Act of 1997 by ceasing operations in some counties in Florida, reducing coverage for some (often prescription drug) benefits, or raising prices in areas where the HMO plan determined that rates were inadequate to meet their operational costs. The future of these benefits is uncertain.

Approximately 10 percent of Florida Medicare beneficiaries have coverage through the Medicaid program. Medicaid covers prescription medications for elderly and disabled individuals whose incomes are under 90 percent of the federal poverty level. Medicaid will also pay some medical expenses not covered by Medicare, generally up to Medicaid limits for these individuals.

Medicare Supplement Policies

Part VIII of ch. 627, F.S., establishes regulatory requirements for Medicare supplement policies. Approximately 13 percent of seniors with drug coverage have purchased individual Medicare supplement (Medigap) policies, which cover medical services not covered by Medicare. These supplement policies are labeled by the Department of Insurance, in terms of coverage packages offered, as plans A thru J. Plans labeled H, I, and J provide coverage for prescription medications. Plans H and I pay 50 percent of charges for prescription drugs with a maximum benefit of $1,250 per year. Plan J pays 50 percent of charges for prescription drugs up to $3,000 per year. All Medigap drug plans have a $250 deductible, and pay 50 percent of the cost of the prescription. The cost of supplemental coverage for Medicare beneficiaries may range from $132 to $324 per month, depending on the extent of coverage in the plan selected, age, health status and other factors.

Out-of-Pocket Spending on Prescription Drugs by Seniors

Nationwide, Medicare beneficiaries spend an average of $415 per year on prescription drugs. Individuals who are older, who have poor health status, or who have limitations on their activities, spend twice the average amount per year.

Seniors, as individual purchasers of prescription drugs, tend to be charged higher prices than group purchasers, due in large part to the ability of large group purchasers to shop for and negotiate better prices for both the prescription drug and dispensing services charged by pharmacists. Individuals rarely have the ability to influence either of these prices, and therefore are subject to cost-shifting from groups with more purchasing power.

C. EFFECT OF PROPOSED CHANGES:

HB 155 amends s. 409.9066, F.S., as created by section 3 of chapter 200-254, Laws of Florida, relating to the Medicare prescription discount program, to modify the discount that must be offered to Florida-resident, Medicare recipients when having a prescription filled at a pharmacy participating in the Medicaid program or the pharmaceutical expense assistance program as follows: instead of the average wholesale price minus 9 percent, plus a dispensing fee of $4.50, the pharmacy must fill the prescription at a price no greater than the cost of ingredients equal to 20 percent below the best price at which the pharmacy, or its parent company, makes the ingredients available under any purchasing arrangement, plus a dispensing fee of $4.50.

The bill's effective date is July 1, 2001.

D. SECTION-BY-SECTION ANALYSIS:

See the preceding EFFECT OF PROPOSED CHANGES portion of the analysis.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

The Agency for Health Care Administration reports that minor costs will be incurred for publication and notification of providers and Medicare beneficiaries of the provisions of this bill. These costs can be paid from existing resources.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Medicare beneficiaries buying their prescription medications from participating pharmacies under this program will see a cost savings in the price paid for prescription drugs under this proposal. Out of the population of 16 million people, 2.7 million qualify for Medicare, according to the Agency for Health Care Administration.

Some pharmacies already offered discount programs to senior citizens that exceeded the required discount under the Medicare prescription discount program. Pharmacies participating in the Medicare prescription discount program will be required to increase the discount provided to

Medicare beneficiaries from the current average wholesale price minus 9 percent to a price no greater than the cost of ingredients equal to 20 percent below the best price at which the pharmacy, or its parent company, makes the ingredients available under any purchasing arrangement. The dispensing fee of $4.50 per prescription remains unchanged.

According to the Agency for Health Care Administration, because pharmacies are highly competitive and operate on a 2.5 to 4 percent net profit, this additional discount could lead pharmacies to withdraw from the Medicaid program, thus partially defeating the purpose of the discount program by making it more difficult for both Medicare and Medicaid recipients to locate participating pharmacies.

D. FISCAL COMMENTS:

The Agency for Health Care Administration noted in its analysis of this bill that the bill could act as a disincentive to pharmacies negotiating prices for other state programs. For example, the state's employee group health plan enjoys an 18 percent discount off the average wholesale price of drugs in its contract. If pharmacies are required to offer Medicare beneficiaries an additional 20 percent below that already discounted level, the pharmacies would incur a substantial cost and may negotiate less of a discount for the state group at the next opportunity. The level of this impact cannot by estimated at this time.

The agency also noted that insurance carriers, health maintenance organizations, health care facilities, and other organizations that enter into discount arrangements with pharmacies could be expected to oppose this Medicare discount requirement, as well, because of its potential impact on their ability to negotiate their own discounts with pharmacies.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON HEALTH PROMOTION:

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