

By Senator Mitchell

4-159B-01

1                                   A bill to be entitled  
2           An act relating to prescription drugs; creating  
3           the "Prescription Drug Fair Pricing Act";  
4           providing legislative findings and purpose;  
5           providing definitions; creating the  
6           Reduced-Cost Prescription Program within the  
7           Agency for Health Care Administration;  
8           requiring drug manufacturers and labelers that  
9           sell prescription drugs through any  
10          state-funded program to enter into a rebate  
11          agreement with the agency and make certain  
12          rebate payments to state agencies; requiring  
13          that the Secretary of Health Care  
14          Administration negotiate the amount of the  
15          rebate; requiring retail pharmacies to provide  
16          a discount for drugs covered by the program and  
17          sold to program participants; requiring that  
18          the agency establish the discounted prices;  
19          providing program eligibility for state  
20          residents who do not have coverage for  
21          prescription drugs under any health insurance  
22          plan or public program; providing for an annual  
23          enrollment fee; requiring retail pharmacies to  
24          disclose the amount of savings to program  
25          participants; requiring that the agency  
26          reimburse retail pharmacies for discounted  
27          prices; providing a procedure for resolving any  
28          discrepancy in the rebate amount; requiring  
29          that the agency annually report to the  
30          Legislature on the Reduced-Cost Prescription  
31          Program; providing rulemaking authority;

1           authorizing the agency to apply for federal  
2           waivers necessary to administer the program;  
3           providing an appropriation; providing an  
4           effective date.

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

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8           Section 1. Prescription Drug Fair Pricing Act.--

9           (1) SHORT TITLE.--This section may be cited as the  
10 "Prescription Drug Fair Pricing Act."

11           (2) FINDINGS AND PURPOSE.--

12           (a) The Legislature finds that:

13           1. Uninsured residents of this state pay excessive  
14 prices for prescription drugs. In many cases, excessive drug  
15 prices deny residents access to medically necessary health  
16 care, and thereby threaten their health and safety. Many  
17 residents are admitted to or treated at hospitals each year  
18 because they cannot afford drugs prescribed for them that  
19 could have prevented the need for hospitalization. Many others  
20 must enter expensive institutional care settings because they  
21 cannot afford the necessary prescription drugs that could have  
22 supported them outside of an institution. All residents of  
23 this state are threatened by the possibility that when they  
24 need medically necessary prescription drugs most, they may be  
25 unable to afford their doctor's recommended treatment.

26           2. Residents of this state and other Americans pay the  
27 highest prices in the world for prescription drugs, prices  
28 that result in extremely high profits for drug companies.  
29 Excessive pricing for prescription drugs undermines the  
30 economy of this state by diminishing the ability of its  
31 residents to contribute as employees and employers.

1           (b) The purpose of this section is to make  
2 prescription drugs more affordable for state residents,  
3 thereby increasing the overall health of our families;  
4 benefiting employers, employees, and the fiscal strength of  
5 our society; promoting healthy communities; and improving the  
6 public health and welfare.

7           (3) DEFINITIONS.--As used in this section, the term:

8           (a) "Agency" means the Agency for Health Care  
9 Administration.

10           (b) "Labeler" means a person or entity that receives  
11 prescription drugs from a manufacturer or wholesaler and  
12 repackages those drugs for later retail sale and that has a  
13 labeler code from the Federal Food and Drug Administration  
14 under section 207.20 of Title 21 of the Code of Federal  
15 Regulations.

16           (c) "Manufacturer" means a manufacturer of  
17 prescription drugs and includes a subsidiary or affiliate of a  
18 manufacturer.

19           (d) "Retail pharmacy" means a business that is  
20 licensed to dispense prescription drugs in this state and that  
21 dispenses drugs covered by a rebate agreement under the  
22 Reduced-Cost Prescription Program.

23           (e) "Secretary" means the Secretary of Health Care  
24 Administration or the secretary's designee.

25           (4) REDUCED-COST PRESCRIPTION PROGRAM.--

26           (a) The Reduced-Cost Prescription Program is  
27 established within the agency to provide discounted  
28 prescription drug prices to uninsured residents of this state.

29           (b) Any drug manufacturer or labeler that sells  
30 prescription drugs in this state through any program funded or  
31 operated by the state shall enter into a rebate agreement with

1 the agency for the Reduced-Cost Prescription Program. The  
2 rebate agreement must require the manufacturer or labeler to  
3 make rebate payments to the appropriate state agency each  
4 calendar quarter according to a schedule established by the  
5 department.

6 (c) The secretary shall negotiate the amount of the  
7 rebate required from a manufacturer or labeler in accordance  
8 with this subsection.

9 1. The secretary shall take into consideration the  
10 rebate calculated under the Medicaid Rebate Program pursuant  
11 to section 1396r-8 of Title 42 of the United States Code, the  
12 average wholesale price of prescription drugs, and any other  
13 information with respect to prescription drug prices and price  
14 discounts.

15 2. The secretary shall use his or her best efforts to  
16 obtain an initial rebate amount equal to or greater than the  
17 rebate calculated under the Medicaid program pursuant to  
18 section 1396r-8 of Title 42 of the United States Code.

19 3. With respect to the rebate taking effect no later  
20 than July 1, 2002, the secretary shall use his or her best  
21 efforts to obtain an amount equal to or greater than the  
22 amount of any discount, rebate, or price reduction for  
23 prescription drugs provided to the Federal Government.

24 (d) A retail pharmacy shall discount the price of  
25 drugs covered by the Reduced-Cost Prescription Program and  
26 sold to program participants.

27 1. The agency shall establish discounted prices for  
28 drugs covered by a rebate agreement and shall promote the use  
29 of efficacious and reduced-cost drugs, taking into  
30 consideration reduced prices for state and federally capped  
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1 drug programs, differential dispensing fees, administrative  
2 overhead, and incentive payments.

3 2. Beginning January 1, 2002, a retail pharmacy shall  
4 offer prescription drugs at or below the average wholesale  
5 price, minus 6 percent, plus the dispensing fee provided under  
6 the state Medicaid program. These initial price levels shall  
7 be specified by the secretary. The average wholesale price is  
8 the wholesale price charged on a specific commodity that is  
9 assigned by the drug manufacturer and is listed in a  
10 nationally recognized drug-pricing file.

11 3. No later than July 1, 2002, a retail pharmacy shall  
12 offer prescription drugs at or below the initial price levels  
13 specified in subparagraph 2., minus the amount of any rebate  
14 paid by the state to the retail pharmacy, plus the dispensing  
15 fee provided under the state Medicaid program. The secretary  
16 shall specify the discounted price levels. In determining the  
17 discounted price levels, the secretary shall consider an  
18 average of all rebates weighted by sales of drugs subject to  
19 these rebates over the most recent 12-month period for which  
20 the information is available.

21 (e)1. Any resident of the state who does not have  
22 coverage for prescription drugs under any health insurance  
23 plan or under any public program may participate in the  
24 Reduced-Cost Prescription Program. The agency shall establish  
25 simplified procedures for determining eligibility and issuing  
26 enrollment cards to eligible residents. The agency shall  
27 undertake outreach efforts to build public awareness of the  
28 program and maximize enrollment by eligible residents. The  
29 agency may adjust the requirements and terms of the  
30 Reduced-Cost Prescription Program to accommodate any new  
31 federally funded prescription drug programs.

1           2. Each fiscal year, the agency shall establish an  
2 annual enrollment fee for the Reduced-Cost Prescription  
3 Program, which may not exceed \$50. An eligible resident must  
4 pay the enrollment fee before enrolling in the program.

5           (f)1. The agency shall adopt rules requiring that  
6 retail pharmacies disclose to program participants the amount  
7 of savings provided as a result of the program. The rules  
8 shall protect proprietary information.

9           2. The agency may not impose transaction charges on  
10 retail pharmacies that submit claims or receive payments under  
11 the Reduced-Cost Prescription Program.

12           3. A retail pharmacy shall submit claims to the agency  
13 to verify the amount charged to program participants.

14           4. On a weekly or biweekly basis, the agency shall  
15 reimburse a retail pharmacy for discounted prices provided to  
16 program participants.

17           5. The agency shall collect from the retail pharmacy  
18 any data that is necessary to calculate the amount of the  
19 rebate from the manufacturer or labeler. The agency shall  
20 protect the confidentiality of all information subject to  
21 confidentiality protection under state or federal law or rule.

22           (g) The name of any manufacturer or labeler that does  
23 not enter into a rebate agreement as provided in paragraph  
24 (4)(c) is public information and the department shall release  
25 this information to the public. The agency shall impose  
26 requirements for prior authorization under the Medicaid  
27 program, as permitted by law, for dispensing prescription  
28 drugs provided by a manufacturer or labeler that does not  
29 enter into a rebate agreement.

30           (h) Any discrepancy in the rebate amount must be  
31 resolved as provided in this paragraph.

1           1. If there is a discrepancy in the manufacturer's or  
2 labeler's favor between the amount claimed by a pharmacy and  
3 the amount rebated by the manufacturer or labeler, the agency,  
4 at the agency's expense, may hire a mutually agreed-upon  
5 independent auditor. If a discrepancy exists following the  
6 audit, the manufacturer or labeler shall justify the reason  
7 for the discrepancy or make payment to the agency for any  
8 additional amount due.

9           2. If there is a discrepancy against the interest of  
10 the manufacturer or labeler in the information provided by the  
11 agency to the manufacturer or labeler regarding the  
12 manufacturer's or labeler's rebate, the manufacturer or  
13 labeler, at the manufacturer's or labeler's expense, may hire  
14 a mutually agreed-upon independent auditor to verify the  
15 accuracy of the data supplied to the agency. If a discrepancy  
16 exists following the audit, the agency shall justify the  
17 reason for the discrepancy or refund to the manufacturer any  
18 excess payment made by the manufacturer or labeler.

19           3. Following the procedures established in  
20 subparagraph 1. or subparagraph 2., the agency or the  
21 manufacturer or labeler may request a hearing. Supporting  
22 documentation must accompany the request for a hearing.

23           (i) By January 15 of each year, the agency shall  
24 submit a report to the Legislature on the enrollment and  
25 financial status of the Reduced-Cost Prescription Program.

26           (j) In administering this section, the agency may  
27 coordinate with other governmental programs and may take  
28 actions to enhance efficiency, reduce the cost of prescription  
29 drugs, and maximize the benefits of this and other  
30 governmental programs, including providing the benefits of the

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1 Reduced-Cost Prescription Program to the beneficiaries of  
2 other programs.

3 (k) The agency may adopt rules for administering this  
4 program.

5 (l) The agency may apply for any waiver of federal law  
6 or rule which is necessary to administer this program.

7 Section 2. (1) The sum of \$115,451,530 is  
8 appropriated from the Grants and Donations Trust Fund in the  
9 Agency for Health Care Administration for the purpose of  
10 paying the administrative costs and meeting the cash-flow  
11 requirements of the Reduced-Cost Prescription Program during  
12 the 2001-2002 fiscal year.

13 (2) The annual enrollment fee for participants in the  
14 Reduced-Cost Prescription Program for the 2001-2002 fiscal  
15 year is \$36.

16 Section 3. This act shall take effect July 1, 2001.

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19 SENATE SUMMARY

20 Creates the "Prescription Drug Fair Pricing Act."  
21 Establishes the Reduced-Cost Prescription Program within  
22 the Agency for Health Care Administration. Requires drug  
23 manufacturers and labelers that sell prescription drugs  
24 through state programs to pay certain rebates to those  
25 programs. Provides for the Secretary of Health Care  
26 Administration to negotiate the rebate amounts. Requires  
27 that retail pharmacies provide a discount for drugs that  
28 are covered under the program and sold to program  
29 participants. Provides for program eligibility for state  
30 residents who do not have coverage for prescription drugs  
31 under any health insurance plan or public program.  
Requires participants in the program to pay an annual  
enrollment fee, which may not exceed \$50. Requires that  
the agency reimburse retail pharmacies for discounted  
prices. Requires that the agency report to the  
Legislature on the Reduced-Cost Prescription Program.  
(See bill for details.)