



HB 0161

2003

1 A bill to be entitled
2 An act relating to prescription drugs; creating s.
3 409.960, F.S.; providing a popular name; creating s.
4 409.962, F.S.; creating "The LifeSaver Rx Program";
5 providing purpose of the program; creating s. 409.964,
6 F.S.; providing definitions; creating s. 409.966, F.S.;
7 providing that the Secretary of Health Care Administration
8 shall operate the LifeSaver Rx Program as a state
9 pharmaceutical assistance program to provide discounts to
10 participants for prescription drugs covered by a rebate
11 agreement; providing that the secretary shall negotiate
12 discount prices or rebates for prescription drugs from
13 manufacturers or labelers; providing that the Agency for
14 Health Care Administration shall contract with
15 participating retail pharmacies to deliver discounted
16 prices to program participants; providing factors to be
17 considered in negotiating discounts or rebates; providing
18 for quarterly calculation of discounts; creating s.
19 409.968, F.S.; providing for calculation of payment by
20 program participants and the agency; requiring
21 participating retail pharmacies in the state to charge the
22 rate allowable under the Medicaid program for prescription
23 drugs sold to program participants; providing for rate of
24 reimbursement of participating retail pharmacies; creating
25 s. 409.970, F.S.; providing requirements for program
26 eligibility; requiring the Agency for Health Care
27 Administration to establish enrollment procedures;
28 providing for an annual enrollment fee; providing for use
29 of enrollment fees and rebates from drug manufacturers;



HB 0161

2003

30 creating s. 409.972, F.S.; providing for operation of the
 31 program; authorizing the Board of Pharmacy to adopt
 32 certain rules; creating s. 409.974, F.S.; providing
 33 procedure for resolution of discrepancies in rebate
 34 amounts; creating s. 409.976, F.S.; requiring an annual
 35 report; creating s. 409.978, F.S.; authorizing
 36 coordination with other programs; creating s. 409.980,
 37 F.S.; authorizing the agency to adopt rules; creating s.
 38 409.982, F.S.; authorizing the agency to seek certain
 39 waivers; providing a specified contribution by the agency
 40 toward the cost of prescription drugs purchased by program
 41 participants; providing severability; providing an
 42 appropriation; providing an effective date.

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

46 Section 1. Section 409.960, Florida Statutes, is created
 47 to read:

48 409.960 Popular name.--Sections 409.960-409.982 shall be
 49 known by the popular name "LifeSaver Rx Program."

50 Section 2. Section 409.962, Florida Statutes, is created
 51 to read:

52 409.962 LifeSaver Rx Program established; findings;
 53 purpose.--

54 (1) It is the finding of the Legislature that
 55 approximately one in four residents of Florida have no
 56 prescription drug insurance coverage or wholly inadequate
 57 prescription drug insurance coverage. These uninsured residents
 58 pay excessive prices for prescription drugs, far higher prices



HB 0161

2003

59 than are paid by managed care organizations, insurance
60 companies, and the Federal Government for the same medicines and
61 dosages. In many cases, these excessive drug prices have the
62 effect of denying residents access to medically necessary care,
63 thereby threatening their health and safety. Many Florida
64 residents require repeated doctor or medical clinic
65 appointments, having become sicker because they could not afford
66 to purchase the prescription drugs prescribed for them. Many
67 residents are admitted to or treated at hospitals each year
68 because they cannot afford the prescription drugs that could
69 have prevented the need for hospitalization. Many others enter
70 expensive institutional care settings because they cannot afford
71 the necessary prescription drugs that could have supported them
72 outside of an institution. In each of these circumstances, state
73 medical assistance programs, including the Medicaid program,
74 literally pay the price. One major reason uninsured residents
75 pay such high prices for prescription drugs is that, unlike
76 insured residents, they have no prescription benefits manager
77 negotiating a fair price with drug companies on their behalf.
78 State government currently provides prescription drugs and acts
79 as a prescription benefit manager through a variety of health
80 plans and assistance programs and, in 2001, the Legislature
81 expanded the state's role in negotiating better prescription
82 drug prices for Medicaid. State government is the only agent
83 that, as a practical matter, can play an effective role as a
84 market participant on behalf of all residents who are uninsured
85 or underinsured. The state can and should act as a prescription
86 benefit manager, negotiating drug rebates and using these funds
87 to reimburse retail pharmacies for offering lower drug prices.



HB 0161

2003

88 (2) Recognizing that the state already acts as a
89 prescription benefit manager for a variety of health plans and
90 assistance programs, including the Medicaid program, the
91 LifeSaver Rx Program is established within the Agency for Health
92 Care Administration. The purpose of the program is to expand
93 Medicaid eligibility for prescription drug benefits only, at a
94 level that does not exceed available funding, thereby providing
95 prescription drug coverage to new populations by expanding the
96 state's role as a participant in the prescription drug
97 marketplace, negotiating rebates from drug companies, and using
98 the funds from such rebates to make prescription drugs more
99 affordable to Florida residents. Each program participant shall
100 receive a discount toward the purchase of all prescription drugs
101 that are covered by the Florida Medicaid program. The
102 Legislature finds that such a program will improve public health
103 and welfare, promote the economic strength of our society, and
104 substantially benefit state health assistance programs,
105 including the Medicaid program.

106 Section 3. Section 409.964, Florida Statutes, is created
107 to read:

108 409.964 Definitions.--As used in this act, unless the
109 context otherwise indicates, the term:

110 (1) "Agency" means the Agency for Health Care
111 Administration.

112 (2) "Labeler" means an entity or person that receives
113 prescription drugs from a manufacturer or wholesaler and
114 repackages those drugs for later retail sale and that has a
115 labeler code from the federal Food and Drug Administration under
116 21 C.F.R. s. 207.20 (1999).



HB 0161

2003

117 (3) "Manufacturer" means a manufacturer of prescription
118 drugs and includes a subsidiary or affiliate of a manufacturer.

119 (4) "Participating retail pharmacy" means a retail
120 pharmacy or other business licensed to dispense prescription
121 drugs in this state that:

122 (a) Participates in the state Medicaid program; or

123 (b) Agrees to participate in the LifeSaver Rx Program.

124 (5) "Program" means the LifeSaver Rx Program.

125 (6) "Secretary" means the Secretary of Health Care
126 Administration or the secretary's designee.

127 (7) "Qualified resident" means an uninsured resident of
128 the state who has obtained from the agency a LifeSaver Rx
129 Program enrollment card.

130 Section 4. Section 409.966, Florida Statutes, is created
131 to read:

132 409.966 Prescription drug discounts; negotiation of
133 discounts or rebates; calculation of discounts.--The secretary
134 shall operate the program as a state pharmaceutical assistance
135 program under 42 U.S.C. s. 1396r-8(c)(1)(C)(i)(III) to provide
136 discounts to participants for prescription drugs covered by a
137 rebate agreement.

138 (1) The secretary shall negotiate discount prices or
139 rebates for prescription drugs from drug manufacturers and
140 labelers for the program. Using sums from negotiated rebates,
141 the agency shall contract with participating retail pharmacies
142 to deliver discounted prices to program participants.

143 (2) In negotiating discount or rebate terms, the secretary
144 shall take into consideration:

145 (a) The rebate calculated under the Medicaid rebate



HB 0161

2003

146 program pursuant to 42 U.S.C. s. 1396r-8;

147 (b) The price provided to eligible entities under 42
148 U.S.C. s. 256b; and

149 (c) Any other available information on prescription drug
150 prices, discounts, and rebates.

151 (3) The secretary may consider any supplemental rebate
152 negotiated pursuant to s. 409.912(38)(a)7.

153 (4) The drug discounts received by program participants
154 shall be calculated by the secretary on a quarterly basis.

155 Section 5. Section 409.968, Florida Statutes, is created
156 to read:

157 409.968 Discounted prices for program participants.--

158 (1) Each program participant's payment shall be equal to
159 the Medicaid allowable charge for the prescription minus the
160 payment made by the agency. The payment made by the agency shall
161 include the estimated manufacturer rebate plus the state subsidy
162 of 2 percent per prescription as provided under this act and the
163 federal matching share for the state general revenue
164 contribution.

165 (2) A participating retail pharmacy shall charge the
166 Medicaid allowable rate for prescription drugs sold to
167 participants in the program.

168 (3) The participating retail pharmacy shall be reimbursed
169 by the agency at the agency's manufacturer estimated rebate
170 amount.

171 (4) The program as established in s. 409.962 is not an
172 entitlement.

173 Section 6. Section 409.970, Florida Statutes, is created
174 to read:



HB 0161

2003

175 409.970 Program eligibility.--

176 (1) An individual is eligible to participate in the
 177 program if he or she:

178 (a) Is a resident of the state;

179 (b) Is 65 years of age or older and is a Medicare
 180 participant;

181 (c) Has a net family income at or below 300 percent of the
 182 federal poverty level;

183 (d) Has exhausted all third-party prescription coverage;
 184 and

185 (e) Requests to be enrolled in the program.

186 (2) An individual is ineligible to participate in the
 187 program if he or she is eligible for assistance under the
 188 state's Medicaid program.

189 (3) The agency shall establish simple procedures for
 190 enrolling program participants. Such procedures shall include
 191 the assessment of an annual enrollment fee of up to \$50 per
 192 enrollee. The agency shall undertake outreach efforts to build
 193 public awareness of the program and maximize enrollment by
 194 eligible residents. Revenues generated from program enrollment
 195 fees and rebates from drug manufacturers shall be used for, but
 196 not be limited to, offsetting state costs to administer the
 197 program, the purchase of prescription drugs, and any public
 198 awareness campaigns.

199 Section 7. Section 409.972, Florida Statutes, is created
 200 to read:

201 409.972 Program operation.--

202 (1) The Board of Pharmacy, as created by s. 465.004, in
 203 consultation with the agency, is authorized to adopt rules



HB 0161

2003

204 pursuant to ss. 120.536(1) and 120.54 requiring disclosure by
 205 participating retail pharmacies to program participants of the
 206 amount of savings provided as a result of the program. Such
 207 rules must protect information that is proprietary in nature.

208 (2) Participating retail pharmacies shall be paid in
 209 advance for program discounts or shall be reimbursed by the
 210 agency on a weekly or biweekly basis, in accordance with
 211 contracts between the agency and such businesses.

212 (3) The agency shall collect from the participating retail
 213 pharmacies utilization data necessary to calculate the amount of
 214 the rebate from the manufacturer or labeler. The agency shall
 215 protect the confidentiality of all information subject to
 216 confidentiality protection under the laws of this state or
 217 federal laws, rules, or regulations.

218 Section 8. Section 409.974, Florida Statutes, is created
 219 to read:

220 409.974 Discrepancies in rebate amounts.--Discrepancies in
 221 rebate amounts must be resolved using the process established in
 222 this section.

223 (1) If there is a discrepancy in the manufacturer's or
 224 labeler's favor between the amount claimed by a participating
 225 retail pharmacy and the amount rebated by the manufacturer or
 226 labeler, the agency, at the agency's expense, may hire a
 227 mutually agreed-upon independent auditor. If a discrepancy still
 228 exists following the audit, the manufacturer or labeler shall
 229 justify the reason for the discrepancy or make payment to the
 230 agency for any additional amount due.

231 (2) If there is a discrepancy against the interest of the
 232 manufacturer or labeler in the information provided by the



HB 0161

2003

233 agency to the manufacturer or labeler regarding the
234 manufacturer's or labeler's rebate, the manufacturer or labeler,
235 at the manufacturer's or labeler's expense, may hire a mutually
236 agreed-upon independent auditor to verify the accuracy of the
237 data supplied to the agency. If a discrepancy still exists
238 following the audit, the agency shall justify the reason for the
239 discrepancy or refund the manufacturer or labeler.

240 (3) Following the completion of procedures established in
241 subsection (1) or subsection (2), the agency, the manufacturer,
242 or the labeler may request a hearing. Hearings shall be
243 conducted pursuant to ss. 120.569 and 120.57. Supporting
244 documentation must accompany the request for a hearing.

245 Section 9. Section 409.976, Florida Statutes, is created
246 to read:

247 409.976 Report.--The agency shall provide a report on the
248 enrollment and financial status of the program to the Governor,
249 the President of the Senate, and the Speaker of the House of
250 Representatives by the second week in January each year.

251 Section 10. Section 409.978, Florida Statutes, is created
252 to read:

253 409.978 Coordination with other programs.--The secretary
254 shall combine drug pricing negotiations to maximize drug rebates
255 when the secretary determines that the combination of such
256 negotiations is beneficial to both the LifeSaver Rx Program and
257 another state program, including the state Medicaid program.

258 Section 11. Section 409.980, Florida Statutes, is created
259 to read:

260 409.980 Rulemaking.--The agency is authorized to adopt
261 rules pursuant to ss. 120.536(1) and 120.54 to implement the



HB 0161

2003

262 provisions of this act. Such rules shall include eligibility
 263 requirements, limits on participation, benefit limitations, a
 264 requirement for generic drug substitution, and other program
 265 parameters comparable to those of the Medicaid program.

266 Section 12. Section 409.982, Florida Statutes, is created
 267 to read:

268 409.982 Waivers.--The agency shall seek any waivers of
 269 federal law, rule, or regulation necessary to implement the
 270 provisions of this act.

271 Section 13. The agency shall contribute 2 percent toward
 272 the cost of each prescription purchased by the program
 273 participant.

274 Section 14. The Legislature shall appropriate from the
 275 General Revenue Fund to the Agency for Health Care
 276 Administration an amount that is sufficient to implement the
 277 provisions of this act.

278 Section 15. If any provision of this act or the
 279 application thereof to any person or circumstance is held
 280 invalid, the invalidity shall not affect other provisions or
 281 applications of the act which can be given effect without the
 282 invalid provision or application, and to this end the provisions
 283 of this act are declared severable.

284 Section 16. This act shall take effect upon becoming a
 285 law.