

By Senator Wasserman Schultz

34-657-03

See HB 161

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

1 requiring the Agency for Health Care  
2 Administration to establish enrollment  
3 procedures; providing for an annual enrollment  
4 fee; providing for use of enrollment fees and  
5 rebates from drug manufacturers; creating s.  
6 409.972, F.S.; providing for operation of the  
7 program; authorizing the Board of Pharmacy to  
8 adopt certain rules; creating s. 409.974, F.S.;  
9 providing procedure for resolution of  
10 discrepancies in rebate amounts; creating s.  
11 409.976, F.S.; requiring an annual report;  
12 creating s. 409.978, F.S.; authorizing  
13 coordination with other programs; creating s.  
14 409.980, F.S.; authorizing the agency to adopt  
15 rules; creating s. 409.982, F.S.; authorizing  
16 the agency to seek certain waivers; providing a  
17 specified contribution by the agency toward the  
18 cost of prescription drugs purchased by program  
19 participants; providing severability; providing  
20 an appropriation; providing an effective date.

21  
22 Be It Enacted by the Legislature of the State of Florida:  
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24 Section 1. Section 409.960, Florida Statutes, is  
25 created to read:

26 409.960 Popular name.--Sections 409.960-409.982 shall  
27 be known by the popular name "LifeSaver Rx Program."

28 Section 2. Section 409.962, Florida Statutes, is  
29 created to read:

30 409.962 LifeSaver Rx Program established; findings;  
31 purpose.--

1           (1) It is the finding of the Legislature that  
2 approximately one in four residents of Florida have no  
3 prescription drug insurance coverage or wholly inadequate  
4 prescription drug insurance coverage. These uninsured  
5 residents pay excessive prices for prescription drugs, far  
6 higher prices than are paid by managed care organizations,  
7 insurance companies, and the Federal Government for the same  
8 medicines and dosages. In many cases, these excessive drug  
9 prices have the effect of denying residents access to  
10 medically necessary care, thereby threatening their health and  
11 safety. Many Florida residents require repeated doctor or  
12 medical clinic appointments, having become sicker because they  
13 could not afford to purchase the prescription drugs prescribed  
14 for them. Many residents are admitted to or treated at  
15 hospitals each year because they cannot afford the  
16 prescription drugs that could have prevented the need for  
17 hospitalization. Many others enter expensive institutional  
18 care settings because they cannot afford the necessary  
19 prescription drugs that could have supported them outside of  
20 an institution. In each of these circumstances, state medical  
21 assistance programs, including the Medicaid program, literally  
22 pay the price. One major reason uninsured residents pay such  
23 high prices for prescription drugs is that, unlike insured  
24 residents, they have no prescription benefits manager  
25 negotiating a fair price with drug companies on their behalf.  
26 State government currently provides prescription drugs and  
27 acts as a prescription benefit manager through a variety of  
28 health plans and assistance programs and, in 2001, the  
29 Legislature expanded the state's role in negotiating better  
30 prescription drug prices for Medicaid. State government is the  
31 only agent that, as a practical matter, can play an effective

1 role as a market participant on behalf of all residents who  
2 are uninsured or underinsured. The state can and should act as  
3 a prescription benefit manager, negotiating drug rebates and  
4 using these funds to reimburse retail pharmacies for offering  
5 lower drug prices.

6 (2) Recognizing that the state already acts as a  
7 prescription benefit manager for a variety of health plans and  
8 assistance programs, including the Medicaid program, the  
9 LifeSaver Rx Program is established within the Agency for  
10 Health Care Administration. The purpose of the program is to  
11 expand Medicaid eligibility for prescription drug benefits  
12 only, at a level that does not exceed available funding,  
13 thereby providing prescription drug coverage to new  
14 populations by expanding the state's role as a participant in  
15 the prescription drug marketplace, negotiating rebates from  
16 drug companies, and using the funds from such rebates to make  
17 prescription drugs more affordable to Florida residents. Each  
18 program participant shall receive a discount toward the  
19 purchase of all prescription drugs that are covered by the  
20 Florida Medicaid program. The Legislature finds that such a  
21 program will improve public health and welfare, promote the  
22 economic strength of our society, and substantially benefit  
23 state health assistance programs, including the Medicaid  
24 program.

25 Section 3. Section 409.964, Florida Statutes, is  
26 created to read:

27 409.964 Definitions.--As used in this act, unless the  
28 context otherwise indicates, the term:

29 (1) "Agency" means the Agency for Health Care  
30 Administration.

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

6           (3) "Manufacturer" means a manufacturer of  
7 prescription drugs and includes a subsidiary or affiliate of a  
8 manufacturer.

9           (4) "Participating retail pharmacy" means a retail  
10 pharmacy or other business licensed to dispense prescription  
11 drugs in this state that:

12           (a) Participates in the state Medicaid program; or  
13 (b) Agrees to participate in the LifeSaver Rx Program.

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

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

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

20           Section 4. Section 409.966, Florida Statutes, is  
21 created to read:

22           409.966 Prescription drug discounts; negotiation of  
23 discounts or rebates; calculation of discounts.--The secretary  
24 shall operate the program as a state pharmaceutical assistance  
25 program under 42 U.S.C. s. 1396r-8(c)(1)(C)(i)(III) to provide  
26 discounts to participants for prescription drugs covered by a  
27 rebate agreement.

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

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

5 (a) The rebate calculated under the Medicaid rebate  
6 program pursuant to 42 U.S.C. s. 1396r-8;

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

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

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

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

16 Section 5. Section 409.968, Florida Statutes, is  
17 created to read:

18 409.968 Discounted prices for program participants.--

19 (1) Each program participant's payment shall be equal  
20 to the Medicaid allowable charge for the prescription minus  
21 the payment made by the agency. The payment made by the agency  
22 shall include the estimated manufacturer rebate plus the state  
23 subsidy of 2 percent per prescription as provided under this  
24 act and the federal matching share for the state general  
25 revenue contribution.

26 (2) A participating retail pharmacy shall charge the  
27 Medicaid allowable rate for prescription drugs sold to  
28 participants in the program.

29 (3) The participating retail pharmacy shall be  
30 reimbursed by the agency at the agency's manufacturer  
31 estimated rebate amount.

1           (4) The program as established in s. 409.962 is not an  
2 entitlement.

3           Section 6. Section 409.970, Florida Statutes, is  
4 created to read:

5           409.970 Program eligibility.--

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

8           (a) Is a resident of the state;

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

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

13           (d) Has exhausted all third-party prescription  
14 coverage; and

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

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

19           (3) The agency shall establish simple procedures for  
20 enrolling program participants. Such procedures shall include  
21 the assessment of an annual enrollment fee of up to \$50 per  
22 enrollee. The agency shall undertake outreach efforts to build  
23 public awareness of the program and maximize enrollment by  
24 eligible residents. Revenues generated from program enrollment  
25 fees and rebates from drug manufacturers shall be used for,  
26 but not be limited to, offsetting state costs to administer  
27 the program, the purchase of prescription drugs, and any  
28 public awareness campaigns.

29           Section 7. Section 409.972, Florida Statutes, is  
30 created to read:

31           409.972 Program operation.--

1       (1) The Board of Pharmacy, as created by s. 465.004,  
2 in consultation with the agency, is authorized to adopt rules  
3 pursuant to ss. 120.536(1) and 120.54 requiring disclosure by  
4 participating retail pharmacies to program participants of the  
5 amount of savings provided as a result of the program. Such  
6 rules must protect information that is proprietary in nature.

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

11       (3) The agency shall collect from the participating  
12 retail pharmacies utilization data necessary to calculate the  
13 amount of the rebate from the manufacturer or labeler. The  
14 agency shall protect the confidentiality of all information  
15 subject to confidentiality protection under the laws of this  
16 state or federal laws, rules, or regulations.

17       Section 8. Section 409.974, Florida Statutes, is  
18 created to read:

19       409.974 Discrepancies in rebate  
20 amounts.--Discrepancies in rebate amounts must be resolved  
21 using the process established in this section.

22       (1) If there is a discrepancy in the manufacturer's or  
23 labeler's favor between the amount claimed by a participating  
24 retail pharmacy and the amount rebated by the manufacturer or  
25 labeler, the agency, at the agency's expense, may hire a  
26 mutually agreed-upon independent auditor. If a discrepancy  
27 still exists following the audit, the manufacturer or labeler  
28 shall justify the reason for the discrepancy or make payment  
29 to the agency for any additional amount due.

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



1 agency to the manufacturer or labeler regarding the  
2 manufacturer's or labeler's rebate, the manufacturer or  
3 labeler, at the manufacturer's or labeler's expense, may hire  
4 a mutually agreed-upon independent auditor to verify the  
5 accuracy of the data supplied to the agency. If a discrepancy  
6 still exists following the audit, the agency shall justify the  
7 reason for the discrepancy or refund the manufacturer or  
8 labeler.

9 (3) Following the completion of procedures established  
10 in subsection (1) or subsection (2), the agency, the  
11 manufacturer, or the labeler may request a hearing. Hearings  
12 shall be conducted pursuant to ss. 120.569 and 120.57.  
13 Supporting documentation must accompany the request for a  
14 hearing.

15 Section 9. Section 409.976, Florida Statutes, is  
16 created to read:

17 409.976 Report.--The agency shall provide a report on  
18 the enrollment and financial status of the program to the  
19 Governor, the President of the Senate, and the Speaker of the  
20 House of Representatives by the second week in January each  
21 year.

22 Section 10. Section 409.978, Florida Statutes, is  
23 created to read:

24 409.978 Coordination with other programs.--The  
25 secretary shall combine drug pricing negotiations to maximize  
26 drug rebates when the secretary determines that the  
27 combination of such negotiations is beneficial to both the  
28 LifeSaver Rx Program and another state program, including the  
29 state Medicaid program.

30 Section 11. Section 409.980, Florida Statutes, is  
31 created to read:

1           409.980 Rulemaking.--The agency is authorized to adopt  
2 rules pursuant to ss. 120.536(1) and 120.54 to implement the  
3 provisions of this act. Such rules shall include eligibility  
4 requirements, limits on participation, benefit limitations, a  
5 requirement for generic drug substitution, and other program  
6 parameters comparable to those of the Medicaid program.

7           Section 12. Section 409.982, Florida Statutes, is  
8 created to read:

9           409.982 Waivers.--The agency shall seek any waivers of  
10 federal law, rule, or regulation necessary to implement the  
11 provisions of this act.

12           Section 13. The agency shall contribute 2 percent  
13 toward the cost of each prescription purchased by the program  
14 participant.

15           Section 14. The Legislature shall appropriate from the  
16 General Revenue Fund to the Agency for Health Care  
17 Administration an amount that is sufficient to implement the  
18 provisions of this act.

19           Section 15. If any provision of this act or the  
20 application thereof to any person or circumstance is held  
21 invalid, the invalidity shall not affect other provisions or  
22 applications of the act which can be given effect without the  
23 invalid provision or application, and to this end the  
24 provisions of this act are declared severable.

25           Section 16. This act shall take effect upon becoming a  
26 law.

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