

Bill No. CS for SB 2750

Amendment No. \_\_\_\_ Barcode 225360

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
1		.	
2		.	
3		.	
4		.	
5			
6			
7			
8			
9			
10			
11	Senator Wasserman Schultz moved the following amendment:		
12			
13	<b>Senate Amendment (with title amendment)</b>		
14	On page 86, line 31,		
15			
16	insert:		
17	Section 62. Section 409.960, Florida Statutes, is		
18	created to read:		
19	<u>409.960 Popular name.--Sections 409.960-409.982 shall</u>		
20	<u>be known by the popular name "LifeSaver Rx Program."</u>		
21	Section 63. Section 409.962, Florida Statutes, is		
22	created to read:		
23	<u>409.962 LifeSaver Rx Program established; findings;</u>		
24	<u>purpose.--</u>		
25	<u>(1) It is the finding of the Legislature that</u>		
26	<u>approximately one in four residents of Florida have no</u>		
27	<u>prescription drug insurance coverage or wholly inadequate</u>		
28	<u>prescription drug insurance coverage. These uninsured</u>		
29	<u>residents pay excessive prices for prescription drugs, far</u>		
30	<u>higher prices than are paid by managed care organizations,</u>		
31	<u>insurance companies, and the Federal Government for the same</u>		

Bill No. CS for SB 2750

Amendment No. \_\_\_\_ Barcode 225360

1 medicines and dosages. In many cases, these excessive drug  
2 prices have the effect of denying residents access to  
3 medically necessary care, thereby threatening their health and  
4 safety. Many Florida residents require repeated doctor or  
5 medical clinic appointments, having become sicker because they  
6 could not afford to purchase the prescription drugs prescribed  
7 for them. Many residents are admitted to or treated at  
8 hospitals each year because they cannot afford the  
9 prescription drugs that could have prevented the need for  
10 hospitalization. Many others enter expensive institutional  
11 care settings because they cannot afford the necessary  
12 prescription drugs that could have supported them outside of  
13 an institution. In each of these circumstances, state medical  
14 assistance programs, including the Medicaid program, literally  
15 pay the price. One major reason uninsured residents pay such  
16 high prices for prescription drugs is that, unlike insured  
17 residents, they have no prescription benefits manager  
18 negotiating a fair price with drug companies on their behalf.  
19 State government currently provides prescription drugs and  
20 acts as a prescription benefit manager through a variety of  
21 health plans and assistance programs and, in 2001, the  
22 Legislature expanded the state's role in negotiating better  
23 prescription drug prices for Medicaid. State government is the  
24 only agent that, as a practical matter, can play an effective  
25 role as a market participant on behalf of all residents who  
26 are uninsured or underinsured. The state can and should act as  
27 a prescription benefit manager, negotiating drug rebates and  
28 using these funds to reimburse retail pharmacies for offering  
29 lower drug prices.

30 (2) Recognizing that the state already acts as a  
31 prescription benefit manager for a variety of health plans and

Bill No. CS for SB 2750

Amendment No. \_\_\_\_ Barcode 225360

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

18 Section 64. Section 409.964, Florida Statutes, is  
19 created to read:

20 409.964 Definitions.--As used in this act, unless the  
21 context otherwise indicates, the term:

22 (1) "Agency" means the Agency for Health Care  
23 Administration.

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

29 (3) "Manufacturer" means a manufacturer of  
30 prescription drugs and includes a subsidiary or affiliate of a  
31 manufacturer.

Bill No. CS for SB 2750

Amendment No. \_\_\_\_ Barcode 225360

1       (4) "Participating retail pharmacy" means a retail  
2 pharmacy or other business licensed to dispense prescription  
3 drugs in this state that:

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

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

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

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

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

12           Section 65. Section 409.966, Florida Statutes, is  
13 created to read:

14           409.966 Prescription drug discounts; negotiation of  
15 discounts or rebates; calculation of discounts.--The secretary  
16 shall operate the program as a state pharmaceutical assistance  
17 program under 42 U.S.C. s. 1396r-8(c)(1)(C)(i)(III) to provide  
18 discounts to participants for prescription drugs covered by a  
19 rebate agreement.

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

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

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

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

31           (c) Any other available information on prescription

Bill No. CS for SB 2750

Amendment No. \_\_\_\_ Barcode 225360

1 drug prices, discounts, and rebates.

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

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

7 Section 66. Section 409.968, Florida Statutes, is  
8 created to read:

9 409.968 Discounted prices for program participants.--

10 (1) Each program participant's payment shall be equal  
11 to the Medicaid allowable charge for the prescription minus  
12 the payment made by the agency. The payment made by the agency  
13 shall include the estimated manufacturer rebate plus the state  
14 subsidy per prescription as provided under this act and the  
15 federal matching share for the state general revenue  
16 contribution.

17 (2) A participating retail pharmacy shall charge the  
18 Medicaid allowable rate for prescription drugs sold to  
19 participants in the program.

20 (3) The participating retail pharmacy shall be  
21 reimbursed by the agency at the agency's manufacturer  
22 estimated rebate amount.

23 (4) The program as established in s. 409.962 is not an  
24 entitlement.

25 Section 67. Section 409.970, Florida Statutes, is  
26 created to read:

27 409.970 Program eligibility.--

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

30 (a) Is a resident of the state;

31 (b) Is 65 years of age or older and is a Medicare

Bill No. CS for SB 2750

Amendment No. \_\_\_\_ Barcode 225360

1 participant;

2 (c) Has a net family income at or below 200 percent of  
3 the federal poverty level in year 1 and at or below 300  
4 percent of the federal poverty level in year 2 and thereafter;

5 (d) Has exhausted all third-party prescription  
6 coverage; and

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

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

11 (3) The agency shall establish simple procedures for  
12 enrolling program participants. The agency shall undertake  
13 outreach efforts to build public awareness of the program and  
14 maximize enrollment by eligible residents. Revenues generated  
15 from rebates from drug manufacturers shall be used for, but  
16 not be limited to, offsetting state costs to administer the  
17 program, the purchase of prescription drugs, and any public  
18 awareness campaigns.

19 Section 68. Section 409.972, Florida Statutes, is  
20 created to read:

21 409.972 Program operation.--

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

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

Bill No. CS for SB 2750

Amendment No. \_\_\_\_ Barcode 225360

1       (3) The agency shall collect from the participating  
2 retail pharmacies utilization data necessary to calculate the  
3 amount of the rebate from the manufacturer or labeler. The  
4 agency shall protect the confidentiality of all information  
5 subject to confidentiality protection under the laws of this  
6 state or federal laws, rules, or regulations.

7           Section 69. Section 409.974, Florida Statutes, is  
8 created to read:

9           409.974 Discrepancies in rebate  
10 amounts.--Discrepancies in rebate amounts must be resolved  
11 using the process established in this section.

12       (1) If there is a discrepancy in the manufacturer's or  
13 labeler's favor between the amount claimed by a participating  
14 retail pharmacy and the amount rebated by the manufacturer or  
15 labeler, the agency, at the agency's expense, may hire a  
16 mutually agreed-upon independent auditor. If a discrepancy  
17 still exists following the audit, the manufacturer or labeler  
18 shall justify the reason for the discrepancy or make payment  
19 to the agency for any additional amount due.

20       (2) If there is a discrepancy against the interest of  
21 the manufacturer or labeler in the information provided by the  
22 agency to the manufacturer or labeler regarding the  
23 manufacturer's or labeler's rebate, the manufacturer or  
24 labeler, at the manufacturer's or labeler's expense, may hire  
25 a mutually agreed-upon independent auditor to verify the  
26 accuracy of the data supplied to the agency. If a discrepancy  
27 still exists following the audit, the agency shall justify the  
28 reason for the discrepancy or refund the manufacturer or  
29 labeler.

30       (3) Following the completion of procedures established  
31 in subsection (1) or subsection (2), the agency, the

Bill No. CS for SB 2750

Amendment No. \_\_\_\_ Barcode 225360

1 manufacturer, or the labeler may request a hearing. Hearings  
2 shall be conducted pursuant to ss. 120.569 and 120.57.  
3 Supporting documentation must accompany the request for a  
4 hearing.

5 Section 70. Section 409.976, Florida Statutes, is  
6 created to read:

7 409.976 Report.--The agency shall provide a report on  
8 the enrollment and financial status of the program to the  
9 Governor, the President of the Senate, and the Speaker of the  
10 House of Representatives by the second week in January each  
11 year.

12 Section 71. Section 409.978, Florida Statutes, is  
13 created to read:

14 409.978 Coordination with other programs.--The  
15 secretary shall combine drug pricing negotiations to maximize  
16 drug rebates when the secretary determines that the  
17 combination of such negotiations is beneficial to both the  
18 LifeSaver Rx Program and another state program, including the  
19 state Medicaid program.

20 Section 72. Section 409.980, Florida Statutes, is  
21 created to read:

22 409.980 Rulemaking.--The agency is authorized to adopt  
23 rules pursuant to ss. 120.536(1) and 120.54 to implement the  
24 provisions of this act. Such rules shall include eligibility  
25 requirements, limits on participation, benefit limitations, a  
26 requirement for generic drug substitution, and other program  
27 parameters comparable to those of the Medicaid program.  
28 Individuals eligible to participate in this program shall not  
29 be subject to the limit of four brand name drugs per month per  
30 recipient as specified in s. 409.912(38)(a).

31 Section 73. Section 409.982, Florida Statutes, is



Bill No. CS for SB 2750

Amendment No. \_\_\_\_ Barcode 225360

1 created to read:

2 409.982 Waivers.--The agency shall seek any waivers of  
3 federal law, rule, or regulation necessary to implement the  
4 provisions of this act in year 1. In year 2 and thereafter,  
5 the agency shall seek any additional waivers of federal law,  
6 rule, or regulation necessary to implement the provisions of  
7 this act.

8 Section 74. The agency shall contribute toward the  
9 cost of each prescription purchased by the program  
10 participant.

11 Section 75. Section 409.9066, Florida Statutes, is  
12 amended to read:

13 409.9066 Medicare prescription discount program.--

14 (1) As a condition of participation in the Florida  
15 Medicaid program or the pharmaceutical expense assistance  
16 program, a pharmacy must agree to charge any individual who is  
17 a Medicare beneficiary and who is a Florida resident showing a  
18 Medicare card when he or she presents a prescription, a price  
19 no greater than the cost of ingredients equal to the average  
20 wholesale price minus 9 percent, and a dispensing fee of  
21 \$4.50.

22 (2) In lieu of the provisions of subsection (1), and  
23 as a condition of participation in the Florida Medicaid  
24 program or the pharmaceutical expense assistance program, a  
25 pharmacy must agree to:

26 (a) Provide a private voluntary prescription discount  
27 program to state residents who are Medicare beneficiaries; or

28 (b) Accept a private voluntary discount prescription  
29 program from state residents who are Medicare beneficiaries.

30

31 Discounts under this subsection must be at least as great as

Bill No. CS for SB 2750

Amendment No. \_\_\_\_ Barcode 225360

1 discounts under subsection (1).

2 (3) The Agency for Health Care Administration shall  
3 publish, on a free website available to the public, the most  
4 recent average wholesale prices for the 200 drugs most  
5 frequently dispensed to the elderly and, to the extent  
6 possible, shall provide a mechanism that consumers may use to  
7 calculate the retail price that should be paid after the  
8 discount required in subsection (1) is applied.

9 Section 76. By January 1, 2004, the Agency for Health  
10 Care Administration shall submit to the Legislature a report  
11 regarding the cost-effectiveness of, and alternatives to,  
12 using average wholesale price in the pricing of pharmaceutical  
13 products purchased by the Medicaid program.

14 Section 77. Implementation of the LifeSaver Rx Program  
15 is contingent upon a specific appropriation authorized in the  
16 General Appropriations Act. The Legislature shall limit  
17 annual appropriations to no more than \$30 million from state  
18 funds to the Agency for Health Care Administration to be used  
19 as state matching funds for the LifeSaver Rx Program. This  
20 annual appropriation limitation shall not apply to  
21 pharmaceutical rebate revenue.

22 Section 78. If any provision of this act or the  
23 application thereof to any person or circumstance is held  
24 invalid, the invalidity shall not affect other provisions or  
25 applications of the act which can be given effect without the  
26 invalid provision or application, and to this end the  
27 provisions of this act are declared severable.

28  
29 (Redesignate subsequent sections.)

30

31

Bill No. CS for SB 2750

Amendment No. \_\_\_\_ Barcode 225360

1 ===== T I T L E A M E N D M E N T =====

2 And the title is amended as follows:

3 On page 8, line 30, after the semicolon

4

5 insert:

6 creating s. 409.960, F.S.; providing a popular  
7 name; creating s. 409.962, F.S.; creating "The  
8 LifeSaver Rx Program"; providing purpose of the  
9 program; creating s. 409.964, F.S.; providing  
10 definitions; creating s. 409.966, F.S.;

11 providing that the Secretary of Health Care  
12 Administration shall operate the LifeSaver Rx  
13 Program as a state pharmaceutical assistance  
14 program to provide discounts to participants  
15 for prescription drugs covered by a rebate  
16 agreement; providing that the secretary shall  
17 negotiate discount prices or rebates for  
18 prescription drugs from manufacturers or  
19 labelers; providing that the Agency for Health  
20 Care Administration shall contract with  
21 participating retail pharmacies to deliver  
22 discounted prices to program participants;  
23 providing factors to be considered in  
24 negotiating discounts or rebates; providing for  
25 quarterly calculation of discounts; creating s.  
26 409.968, F.S.; providing for calculation of  
27 payment by program participants and the agency;  
28 requiring participating retail pharmacies in  
29 the state to charge the rate allowable under  
30 the Medicaid program for prescription drugs  
31 sold to program participants; providing for

Bill No. CS for SB 2750

Amendment No. \_\_\_\_ Barcode 225360

1 rate of reimbursement of participating retail  
2 pharmacies; creating s. 409.970, F.S.;  
3 providing requirements for program eligibility;  
4 requiring the Agency for Health Care  
5 Administration to establish enrollment  
6 procedures; providing for use of rebates from  
7 drug manufacturers; creating s. 409.972, F.S.;  
8 providing for operation of the program;  
9 authorizing the Board of Pharmacy to adopt  
10 certain rules; creating s. 409.974, F.S.;  
11 providing procedure for resolution of  
12 discrepancies in rebate amounts; creating s.  
13 409.976, F.S.; requiring an annual report;  
14 creating s. 409.978, F.S.; authorizing  
15 coordination with other programs; creating s.  
16 409.980, F.S.; authorizing the agency to adopt  
17 rules; creating s. 409.982, F.S.; authorizing  
18 the agency to seek certain waivers; providing a  
19 contribution by the agency toward the cost of  
20 prescription drugs purchased by program  
21 participants; amending s. 409.9066, F.S.;  
22 requiring the Agency for Health Care  
23 Administration to publish on a website the  
24 average wholesale prices of drugs provided  
25 through the program; requiring the agency to  
26 publish additional information to assist  
27 consumers; requiring a report on methods of  
28 pricing pharmaceutical products purchased by  
29 the program; providing an appropriation;  
30 providing for severability;  
31