STORAGE NAME: h0769z.hcs ****AS PASSED BY THE LEGISLATURE****
DATE: June 15, 2000 **CHAPTER #: 2000-254, Laws of Florida**

HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON HEALTH CARE SERVICES
FINAL ANALYSIS

BILL #: CS/CS/HBs 769 & 1087 (Passed as CS/CS/SB 940)

RELATING TO: Pharmaceutical Expense Assistance

SPONSOR(S): Committee on Health & Human Services Appropriations, Health Care Services, Representatives Argenziano, Byrd, Pruitt, Goode, and others

TIED BILL(S):

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

(1) HEALTH CARE SERVICES YEAS 16 NAYS 0
(2) ELDER AFFAIRS & LONG TERM CARE YEAS 11 NAYS 0
(3) GOVERNMENTAL RULES & REGULATIONS YEAS 7 NAYS 0
(4) HEALTH AND HUMAN SERVICES APPROPRIATIONS YEAS 8 NAYS 0
(5)

I. SUMMARY:

CS/CS/HBs 769 & 1087 is entitled the “Prescription Affordability Act for Seniors.” The bill consists of two parts:

- A pharmaceutical expense assistance program for very low-income elders, targeting those dually eligible for both Medicare and Medicaid with incomes between 90 and 120 percent of the federal poverty level, who meet other specified requirements, but whose limited assistance or Medicare coverage does not include any pharmacy benefit. This program is effective January 1, 2001.

- The Medicare Prescription Discount Program, which requires 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, showing 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, 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.

The Agency for Health Care Administration (AHCA) has lead administrative responsibility for these program components.

The bill provides specific appropriations from General Revenue of $15 million to AHCA to implement the pharmaceutical expense assistance program, and $250,000 to AHCA to administer the pharmaceutical expense assistance program.

The bill’s effective date is July 1, 2000.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1.	Less Government	Yes []	No [x]	N/A []
2.	Lower Taxes	Yes []	No []	N/A [x]
3.	Individual Freedom	Yes []	No []	N/A [x]
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:

Less Government

In creating the Pharmaceutical Expense Assistance Program, the bill requires the establishment of expanded government functions.

B. PRESENT SITUATION:

Outpatient prescription drugs, which are not covered by Medicare, represent a substantial out-of-pocket burden for many elderly and disabled persons. This lack is often cited as a major shortcoming of the Medicare program, the federal health insurance program for older and disabled Americans. On average, elderly people spend just over $2,000 on medical care and prescription drugs, almost 20 percent of their annual income, even though most are on Medicare and have some type of private insurance as well, according to a recent study by the American Association of Retired (AARP) Persons. The Commonwealth Fund estimates that 11 percent of Medicare beneficiaries spend more than $100 per month on prescription drugs.

Florida is home to approximately 2.5 million elderly Medicare beneficiaries. Over 90 percent of these elders take one prescribed drug daily, while the average take 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 diseases, 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 prescription drug benefits under Medicare HMOs 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% 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 policies (known as “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 Drug 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.

Medicaid

Medicaid is a medical assistance program that pays for health care for the poor and disabled. The program is jointly funded by the federal government, the state, and the counties. The federal government, through law and regulations, has established extensive requirements for the Medicaid program. The Agency for Health Care Administration is the single state agency responsible for the Florida Medicaid program. The statutory provisions for the Medicaid program appear in ss. 409.901 - 409.9205, F.S. Individuals who are elderly or disabled, whose incomes are under 100 percent of the federal poverty level (FPL) are an optional coverage group eligible for Medicaid under the provisions of s. 409.904(1), F.S. Payments for services to individuals in the optional categories are subject to the availability of monies and any limitations established by the General Appropriations Act or chapter 216, F.S. In the 1992 Special Session of the Legislature, proviso language in

the amended General Appropriations Act reduced Medicaid eligibility from 100 percent FPL to 90 percent FPL.

Medicaid spent approximately $249 million on prescriptions for 170,000 aged persons in 1998, an average of approximately $1,465 per person.

Certain Medicare beneficiaries have incomes low enough to qualify for limited Medicaid benefits--currently between 90 percent and 120 percent of the federal poverty level--but Medicaid does not pay for any outpatient prescription drugs for these individuals. Medicaid only covers Medicare premiums, deductibles, or copayments for these individuals. These individuals are responsible for the costs of their own prescriptions.

Medicaid Drug Rebate Program

The Omnibus Budget Reconciliation Act of 1990 requires a pharmaceutical company to pay a rebate on its drug products in order to receive reimbursement by the Medicaid program. This law requires drug manufacturers that participate in the Medicaid program to enter into a national rebate contract with the Secretary of the Department of Health and Human Services for states to receive federal funding for outpatient drugs dispensed to Medicaid patients. The rebate program requires drug manufacturers to pay state Medicaid programs, for each of a manufacturer's pharmaceutical products, the higher of a basic percentage rebate or a rebate equivalent to the best price the manufacturer offers a non-government customer. Manufacturers must pay an additional rebate if the price of any product has increased faster than the Consumer Price Index since the fourth quarter of 1990. These rebates apply only to state Medicaid programs and are not available to the general public.

Medicaid Pharmacy Pricing

Medicaid uses a complex algorithm to determine the price it will pay for a specific drug at a given time. The maximum Medicaid will pay is the lesser of the Average Wholesale Price of the drug less 11.5 percent, the Wholesale Acquisition Cost of the drug plus 7 percent, the Federal maximum allowable cost, the state maximum cost, or the amount billed. The pricing system edits a claim which has been billed to Medicaid, and therefore does not apply to non-Medicaid transactions.

Other States' Programs Providing Pharmaceutical Assistance to the Elderly

A number of states have implemented, or are implementing, programs or exploring policy options that involve: 1) assisting elderly and disabled individuals in gaining access to the prescription drug discounts and rebates enjoyed by government; or 2) developing a state-funded program which would provide either coverage or access to prescription medications for the elderly. Sources of funds for these programs include: the state general fund, tobacco tax, tobacco settlements, sales tax, rebate revenue, trust funds, lottery and casino revenues, and participant fees.

According to an April 1999 report from the AARP, 14 states have implemented programs to provide pharmaceutical coverage for low-income elderly persons or persons with disabilities who do not qualify for Medicaid. The states that have implemented such programs 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); and Minnesota (1999).

Information available from the Pharmaceutical Research and Manufacturers of America (PHARMA) in August 1999 indicated that 15 states had a state pharmaceutical assistance program for low-income elderly. Compared to the AARP list of 14 states, the PHARMA data included Missouri and Nevada, but did not include Wyoming. As of November 1999, the National Conference of State Legislatures reported that a total of 16 states had adopted elder pharmacy assistance programs, with North Carolina being the newest. Another five states considered but did not adopt such programs as part of 1999 legislative deliberations, according to PHARMA. As of early February 2000, the National Conference of State Legislatures reported that, so far, 29 states have senior pharmaceutical assistance programs on the agenda for 2000.

Drug Manufacturers' Patient Assistance Programs

Uninsured individuals, including the elderly whose prescription drug costs are not otherwise covered, may obtain some drugs through the drug manufacturers' patient assistance programs that are available for limited periods of time, and only available via direct intervention by a treating physician. The lack of a central point of contact for this activity, the time limited nature of such coverage, differing eligibility criteria, and a cumbersome application process create frustration and discourage patient and physician participation, Even so, Pfizer, one of the large drug manufacturers, reported that in 1998 it provided $8.6 million in indigent drug assistance via over 111,00 prescriptions to just under 50,000 patients through more than 2,300 health care providers in the State of Florida during 1998.

Federal Poverty Level

The federal Department of Health and Human Services annually updates the federal poverty guidelines used as the basis for eligibility for a variety of federal and state programs. These data, generally referred to as the "federal poverty level" are published in the *Federal Register*. As published on February 15, 2000, the federal poverty level for the indicated family sizes and percentage levels for the year 2000 are as follows:

Size of Family Unit	90% of FPL	100% of FPL	120% of FPL
1	$7,515	$8,350	$10,020
2	$10,125	$11,250	$13,500
3	$12,735	$14,150	$16,980
4	$15,345	$17,050	$20,460

C. EFFECT OF PROPOSED CHANGES:

CS/CS/HBs 769 & 1087 provides for: a pharmaceutical expense assistance program for very low-income elders; discounted prescribed drug costs for Medicare beneficiaries; and specific appropriations. See the SECTION-BY-SECTION ANALYSIS which follows for additional detail.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Provides for the short title, the "Prescription Affordability Act for Seniors."

Section 2. Creates the pharmaceutical expense assistance program consisting of the following subsections:

Subsection (1) provides for the establishment of the program to provide pharmaceutical expense assistance to certain low-income elderly individuals.

Subsection (2) provides for program eligibility, limited to those individuals who qualify for limited assistance under the Florida Medicaid program as a result of being dually eligible for both Medicare and Medicaid, 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 $7,515 to $10,020 for individuals and from $10,125 to $13,500 for family size of two]; are eligible for both Medicare and Medicaid; are not enrolled in a Medicare HMO that provides a pharmacy benefit; and request to be enrolled in the program.

Subsection (3) specifies that program benefits are those medications 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.

Subsection (4) provides for the program to be administered by the Agency for Health Care Administration (AHCA), in consultation with the Department of Elderly Affairs. A single page application is to be 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.

Subsection (5) indicates that the program is not an entitlement.

Subsection (6) requires pharmaceutical manufacturers, in order to have a drug covered under Medicaid or this program, to: provide a rebate to the state 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.

Subsection (7) specifies that reimbursements to pharmacies participating in the program are to be equivalent to reimbursements under the Medicaid program.

Section 3. Establishes the Medicare Prescription Discount Program, consisting of the following subsections:

Subsection (1) requires 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, showing 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.

Subsection (2) specifies that, 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. Discounts under this program must be at least as great as discounts under subsection (1).

Section 4. Appropriates $15 million from the General Revenue Fund to AHCA to implement the pharmaceutical expense assistance program effective January 1, 2001. Rebates collected under subsection (6) of section (1) shall be used to provide for additional benefits or serve additional people in the program.

Section 5. Appropriates from the General Revenue Fund to AHCA $250,000 to administer the pharmaceutical expense assistance program.

Section 6. Provides an effective date of July 1, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

The bill appropriates from the General Revenue Fund to AHCA $15 million to implement the pharmaceutical expense assistance program, and from the General Revenue Fund to AHCA $250,000 to administer the pharmaceutical expense assistance program.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

To the extent that local governments may be providing funds to a local effort to provide pharmacy assistance to local elderly residents, such counties may see a decrease in demand for any such program.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that pharmacies will be selling prescribed drugs to Medicare recipients at a lower rate than such drugs would be sold without a discount, such pharmacies will receive less revenue from such sales to Medicare beneficiaries.

D. FISCAL COMMENTS:

To the extent that those people specifically targeted for the pharmaceutical expense assistance program, namely those very low-income elders with incomes between 90 and 120 percent of the federal poverty level, are already known to Medicaid because of the limited benefits they receive as dually eligible for Medicare and Medicaid, the administrative costs of identifying these individuals will be minimal.

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 expend 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 state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

The Agency for Health Care Administration is given rulemaking authorization for implementing the provisions of this legislation.

C. OTHER COMMENTS:

Since issues relating to pharmacy assistance under Medicare are pending in Congress, it was suggested that consideration may need to be given to a “sunset” of this bill’s provisions if comparable provisions are adopted federally. While such a provision appeared in earlier versions of the bill, such a provision was not included in the adopted version of the bill.

There is no indication in the bill how benefits under the new pharmaceutical expense assistance program will be coordinated with the Medicaid Medically Needy program, which is designed as a catastrophic coverage option based on month-to-month eligibility via spend-down. The Medically Needy program has covered pharmacy costs as a major component of expense assistance.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

When the Committee on Health Care Services heard this bill on March 23, 2000, the committee approved a committee substitute which: deleted reference to the Commission on Pharmaceutical Benefits for Elderly and Disabled Persons and the aggregation of purchasing of prescribed drugs by all state entities involved in drug purchasing; and created the Medication Cost-Reduction Program.

The Committee on Elder Affairs & Long Term Care heard the bill on April 5, 2000, and adopted two amendments. The first amendment revised the eligibility standard for the Pharmacy Benefit Program, raising the income limit from 120% to 150% of the federal poverty guidelines. The second amendment reduced the participants' copayment from 20 percent to 5 percent.

On April 12, 2000, the Committee on Governmental Rules & Regulations adopted the following amendment and passed the bill favorably, as amended The amendment removed language "the so-called specified low-income Medicare beneficiaries" for those with incomes between 100% and 150% of the federal poverty level.

The Committee on Health and Human Services Appropriations, on April 18, 2000, approved a committee substitute which combined CS/HB 769 and HB 1087. That committee approved only a pharmacy benefit program for the elderly and most in need and a medication purchasing cooperative and appropriations for each.

On April 28, 2000, the House of Representatives adopted a strike-everything amendment on second reading which reflected agreed-upon language relating to the pharmaceutical expense assistance program and related funding of $15 million, and the Medicare prescription discount program. On May 2, 2000, the House took up the bill on third reading and adopted an amendment lowing the appropriation to $7.5 million and a technical amendment, and sent the bill to the Senate.

On May 5, 2000, the Senate took and amended CS/CS/SB 940 to reflect the substance of CS/CS/HB 769 & 1087, specified $15 million for the pharmaceutical expense assistance program, and sent the Senate bill to the House, which the House unanimously approved subsequently that day.

VII. SIGNATURES:

COMMITTEE ON HEALTH CARE SERVICES:

Prepared by:	Staff Director:
Phil E. Williams	Phil E. Williams

AS REVISED BY THE COMMITTEE ON ELDER AFFAIRS & LONG TERM CARE:

Prepared by:	Staff Director:
Tom Batchelor, Ph.D.	Tom Batchelor, Ph.D.

AS FURTHER REVISED BY THE COMMITTEE ON GOVERNMENTAL RULES & REGULATIONS:

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AS FURTHER REVISED BY THE COMMITTEE ON HEALTH AND HUMAN SERVICES APPROPRIATIONS:

Prepared by:	Staff Director:
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FINAL ANALYSIS PREPARED BY THE COMMITTEE ON HEALTH CARE SERVICES:

Prepared by:	Staff Director:
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