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**DATE:** March 14, 2001

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
HEALTH PROMOTION  
ANALYSIS**

**BILL #:** HB 133  
**RELATING TO:** Medication Purchasing Cooperative  
**SPONSOR(S):** Representative(s) Argenziano & others

**TIED BILL(S):**

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

- (1) HEALTH PROMOTION
  - (2) FISCAL POLICY & RESOURCES
  - (3) COUNCIL FOR HEALTHY COMMUNITIES
  - (4)
  - (5)
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**I. SUMMARY:**

HB 133 establishes a medication purchasing cooperative whereby those individuals who are 65 years or older or who are vulnerable adults and who have incomes at or below 250 percent of the federal poverty level can obtain discounts on prescribed medications. The cooperative is to be established by the Agency for Health Care Administration, in consultation with the Department of Health, the Department of Elderly Affairs, and the Department of Management Services. Eligible individuals who enroll in the cooperative, after paying a monthly membership fee to cover administrative costs, may receive discounts from participating pharmacies that have contracted with the state. The Agency for Health Care Administration must administer the cooperative, solicit competitive bids from licensed pharmacies to obtain discounts on all prescribed medicines for cooperative members, and issue an identification card to cooperative members. The Agency for Health Care Administration must submit an annual report to Legislative leadership by January 1 of each year on the status of the cooperative.

The bill provides a General Revenue appropriation of \$250,000 for implementation of the medication purchasing cooperative.

The bill's effective date is July 1, 2001.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |   |  |                              |
|-----------------------------------|---|--|------------------------------|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/>            | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/>            | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/>            | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/>            | N/A <input type="checkbox"/> |

For any principle that received a "no" above, please explain:

The cooperative, as a governmental entity, creates more government.

B. PRESENT SITUATION:

**The Florida Prescription Affordability Act for Seniors**

Chapter 2000-254, Laws of Florida, created the "Prescription Affordability Act for Seniors." The following is a summary of the two parts of this enactment.

Pharmaceutical Expense Assistance Program

Codified as s. 409.9065, F.S., the act created a pharmaceutical expense assistance program for low-income individuals who qualify for limited assistance under Medicaid as a result of being dually eligible for both Medicaid and Medicare, 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 \$7,731 to \$10,308 for individuals and from \$10,449 to \$13,932 for family size of two, as of February 16, 2001];
- Are eligible for both Medicare and Medicaid;
- Are not enrolled in a Medicare health maintenance organization that provides a pharmacy benefit; and
- Request to be enrolled in the program.

Medications covered under the program are those 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.

The program is administered by the Agency for Health Care Administration (AHCA), in consultation with the Department of Elderly Affairs. A single page application has been 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. The act states that the program is not an entitlement.

In order for a drug product to be covered under the program, the product's manufacturer must provide a rebate 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. Reimbursements to pharmacies under the program are to be equivalent to reimbursements under the Medicaid program.

The act appropriated \$15 million from the General Revenue Fund to AHCA to implement the pharmaceutical expense assistance program effective January 1, 2001. Rebates collected are to be used to help finance the pharmaceutical expense assistance program. Additionally, \$250,000 was appropriated from the General Revenue Fund to AHCA to administer the pharmaceutical expense assistance program. It should be noted that the Governor's Legislative Budget Request includes slightly more than \$30 million to provide for annualized funding for this program.

#### Medicare Prescription Discount Program

Codified as s. 409.9066, F.S., the act also required 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 presenting 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, 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. These discounts must be at least as great as discounts provided under this program.

#### **Status of Pharmaceutical Assistance Programs in Other States**

The number of states implementing programs or policies dealing with pharmaceutical assistance to the elderly has continued to increase as the price of prescription drugs has soared. During the past two years, 35 state legislatures have considered the issue. By January 2001, 26 states had passed pharmaceutical assistance laws or implemented non-legislative executive initiatives. Twenty-four of the state programs were in operation by January 2001 with Kansas and Iowa planning implementation in July 2001. Several of the state programs in operation were implemented during the period 1999-2001. The 24 states and their dates of implementation 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); California, Minnesota, Missouri, and Nevada (1999); Indiana, North Carolina, New Hampshire, and West Virginia (2000); and Florida, South Carolina, and Washington (2001).

The laws and initiatives relating to pharmaceutical assistance have attempted to address the problem of rapidly escalating prescription drug prices in a variety of ways. Twenty states provide a direct subsidy using state funds, one state provides a year-end tax credit, and five states offer a discount (no subsidy) for eligible senior citizens. Some states have attempted to include more people by adjusting Medicaid eligibility. The trend is toward statewide programs designed to reduce drug prices for broader groups of consumers.

#### **Tri-State Prescription Drug-Buying Pool**

The New England states of Maine, New Hampshire, and Vermont have begun implementing a program designed to coordinate action that could significantly impact prescription drug expenditures

in the states' public programs, including Medicaid. The formation of a Tri-State Coalition (coalition) was announced and an request-for-proposals (RFP) was issued on October 23, 2000. Although the coalition is focusing first on public programs, in later phases the initiative intends to produce savings for the following groups: individuals without access to pharmacy benefit coverage; Medicare beneficiaries; state employees, retirees and dependents; and college and university employees, retirees and dependents.

The RFP is designed to recruit a Pharmacy Benefits Manager (PBM), a technique often used in the private sector to hold down prescription drug costs. The RFP due date was January 9, 2001, and 8 companies submitted bids. The selection of a PBM is anticipated in Spring 2001, with services available July 1, 2001. Although only one PBM will be selected, it is intended that each of the three states will contract separately with the PBM.

The coalition's primary objectives in undertaking this project are to enhance quality of care, control pharmacy expenditures on behalf of the individuals for whom each state provides coverage, reduce program administrative costs and improve access to those who need it. In addition, the coalition plans to help the uninsured and public beneficiaries lower their drug costs. Some of the ways in which the coalition expects to meet these objectives include the following: negotiation of lower prices and rebates; greater efficiency in pharmacy claims processing; reduction in processing claims submitted for ineligible clients, by ineligible providers, or for non-covered drug services; reduced administrative costs for such items as postage, claim forms, data entry operation, and claims resolution staff; cost avoidance of claims for clients with third party liability for pharmacy services; prevention of payment for fraudulent or duplicate claims; and more intensive clinical management.

By utilizing a single PBM, the coalition intends to maximize its ability to control costs, negotiate rebate dollars, improve benefit management, and improve the quality of care. The intent is to achieve costs savings without resorting to the use of a formulary.

### **State Initiatives to Establish Drug-Buying Clubs**

Several states have established prescription "buyer's clubs" by law and several buyers clubs have been established by executive action. The State of Washington is establishing a state-sponsored purchasing alliance for seniors aged 55 or older who are Washington residents and who have no prescription drug coverage to buy prescription drugs at a reduced cost. The Governor of the State of Washington directed the Department of Health and the Administrator to take all administrative actions necessary to implement a program to provide prescription drug price discounts negotiated through the Health Care Authority to Washington citizens aged 55 and older. Under the AWARDS (A Washington Alliance to Reduce Prescription-Drug Spending) program, members pay the AWARDS discount price when buying prescription drugs from a participating pharmacy and showing a valid membership card or when buying drugs by mail. Under the program, seniors aged 55 and older will pay \$15 per individual or \$25 per family to receive discounts of up to 12 to 30 percent for prescription drugs from participating pharmacies. AWARDS members may get larger discounts if they use the mail-order service to purchase prescriptions under the AWARDS program. The AWARDS program will only operate if the State of Washington can enter into a contract with a pharmacy benefits manager where the contract provides that the program will operate at no cost to the state. Under the AWARDS program, the pharmacy benefits manager is responsible for pharmacy benefits management services, member enrollment, the AWARDS pharmacy network, the provision of assessment data, and administrative duties through a contract with the State of Washington. A reduced cost for prescription drugs is set by contract between the state and the pharmacy benefits manager. The administrative costs for the AWARDS program are covered by the enrollment fee.

The State of Iowa has received \$1 million in federal funds through the United States Health Care Financing Administration to establish a demonstration project in the state to lower pharmaceutical costs for individuals and other purchasers through the establishment of a prescription drug cooperative. Individuals, employers, insurers, and local pharmacies are eligible to join the cooperative. Individuals would pay no more than a minimal fee to join the cooperative. Through the cooperative, members would pay a discounted rate when purchasing prescription drugs.

The State of West Virginia established by executive action a program (Senior Prescription Assistance Network II, or SPAN II) to allow its residents aged 65 and older who are Medicare beneficiaries and who do not currently have pharmacy benefits, or who have limited coverage for prescription drug benefits, to receive discounts on their prescription drugs. The program may not be used in conjunction with other discount programs or with any other coverage for prescription drug benefits. To qualify for participation in SPAN II, the applicant's total income for 1999 must be \$25,000 or less for a single person, or \$33,750 or less for two people. Individuals with more dependents may still qualify with a graduated income scale.

Under the SPAN II program, the state contracts with a pharmacy benefits manager to negotiate a discount price that allows pharmacists to voluntarily participate in the program. SPAN II recipients pay the average wholesale price minus 13 percent for brand-name drugs and the average wholesale price minus 15 percent for generic drugs with exceptions. In addition, the recipients pay a dispensing fee of \$3.40 of which \$0.25 goes to the pharmacy benefits manager and \$0.15 goes to the State of West Virginia to cover administrative costs. According to state officials, approximately 3,000 seniors have used the program since its inception in December, 2000, with an average discount of 20 percent off their retail drug purchases. The SPAN II recipients do not pay a membership fee and there are no premiums or deductibles.

### **Private Drug-Buying Clubs**

A variety of new companies are offering discount prices on prescription drugs for people who have insurance that does not provide pharmacy benefits or who are uninsured. The American Association of Retired Persons (AARP) has a mail-order pharmacy in which members pay a \$15 enrollment fee and save an average of \$9.46 per prescription, according to the AARP Member Choice program. YourRxPlan, a collaboration between Reader's Digest and Merck-Medco, provides a discount prescription service for persons who do not have coverage, for an annual fee of \$25 for individuals and \$40 for families, in which consumers save up to 40 percent on prescription drugs. Under drug buying club plans, members may order medications by mail, via the Internet, by telephone, or through participating pharmacies. These companies assist people who do not have access to an organization or employer to negotiate lower discounts for prescription drugs.

**[NOTE:** Information relating to other states' activities was generally compiled from information available at the following web site and related links: [www.ncsl.org/programs/health/drugdisc.htm](http://www.ncsl.org/programs/health/drugdisc.htm)]

### **General Background**

Outpatient prescription drugs, which are not covered by Medicare, represent a substantial out-of-pocket burden for many elderly persons. This lack of prescription drug coverage is often cited as a major shortcoming of the Medicare program, the federal health insurance program for older and disabled Americans.

Florida is home to approximately 2.7 million elderly Medicare beneficiaries. Over 90 percent of these elders take one prescribed drug daily, while the average takes 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 disease, 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 these benefits 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 percent of the federal poverty level. Medicaid will also pay some medical expenses not covered by Medicare, generally up to Medicaid limits for these individuals.

### **Out-of-Pocket Spending on Prescription Drugs 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.

### **C. EFFECT OF PROPOSED CHANGES:**

HB 133 establishes the medication purchasing cooperative under the Agency for Health Care Administration, designed to assist seniors and disabled persons in purchasing prescription drugs at the best possible price. The bill: requires the cooperative to annually solicit competitive bids from licensed pharmacies to obtain discounts for cooperative members; authorizes the Agency for Health Care Administration to charge a monthly membership fee to cover administrative costs, and to issue membership identification cards; and requires participating pharmacies to guarantee the discount on a prescribed drug at the rate quoted in the contract with the state. The bill provides an appropriation to the Agency for Health Care Administration for start-up costs.

D. SECTION-BY-SECTION ANALYSIS:

**Section 1.** Provides for the establishment of the medication purchasing cooperative as follows:

Subsection (1) provides that, notwithstanding any other general or special law to the contrary, the Agency for Health Care Administration, in consultation with the Department of Health, the Department of Elderly Affairs, and the Department of Management Services, shall establish a medication purchasing cooperative to assist qualified individuals with the purchase of prescribed drugs at the lowest possible price.

Subsection (2) requires that the medication purchasing cooperative be administered by the Agency for Health Care Administration.

Subsection (3) authorizes the Agency for Health Care Administration to adopt administrative rules to implement the provisions of this section.

Subsection (4) addresses eligibility for membership in the medication purchasing cooperative, which is limited to individuals who are residents of the state who are 65 years of age or older, or who are vulnerable adults as defined in s. 415.102(26), F.S., and who have incomes at or below 250 percent of the federal poverty level. [NOTE: Section 415.102(26), F.S., defines "vulnerable adult" as a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, physical, or developmental disability or dysfunctioning, or brain damage, or the infirmities of aging. As of February 16, 2001, the referenced 250 percent of the federal poverty level for an individual is an annual income of \$21,475 and for a family of four, \$44,125.]

The cooperative is required to develop and implement application and eligibility determination policies and procedures necessary to determine eligibility for and enroll individuals in the cooperative.

Subsection (5) directs the cooperative to at least annually solicit competitive bids from licensed pharmacies to obtain discounts on all prescribed medicines for cooperative members. Companies bidding to serve the cooperative's membership must bid a percentage discount on all prescribed medicines listed in the state's procurement document. The cooperative may solicit the bids on a county, regional, or statewide basis. The Agency for Health Care Administration must select pharmacies to participate in the program based on price, extent of drugs discounted, geographic coverage, and other factors.

Subsection (6) authorizes the Agency for Health Care Administration to charge individuals enrolled in the cooperative a monthly membership fee at a level needed to fully offset the administrative costs of the cooperative. The agency is directed to issue an identification card to cooperative members for purposes of member identification to participating pharmacies.

Subsection (7) stipulates that member use of the card or participating pharmacy use of the card is voluntary. However, if a member presents a cooperative identification card to a participating pharmacy, the pharmacy must guarantee the member a discount on a prescribed drug at the rate quoted in its contract with the state.

Subsection (8) requires the agency to annually submit a report to the Speaker of the House of Representatives and the President of the Senate by January 1 on the status of the cooperative, including information on total enrollment, number of participating pharmacies, level of discounts, and savings realized by members enrolled in the program

**Section 2.** Provides for a General Revenue appropriation of \$250,000 to the Agency for Health Care Administration for implementation of the medication purchasing cooperative.

**Section 3.** Provides for an effective date of July 1, 2001.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

An unknown amount of revenue will be generated by the annual fees paid by cooperative members.

2. Expenditures:

The Agency for Health Care Administration will incur costs to initially establish and to administer the medication purchasing cooperative. The agency will incur costs to complete an annual report to the presiding officers of the Legislature regarding the status of the cooperative.

The Agency for Health Care Administration has specified that recurring costs associated with the bill's implementation will depend upon the level of enrollment in the cooperative and the number of participating pharmacies. If the fee is fully implemented, the agency does not anticipate additional costs to the state. The bill provides an appropriation of \$250,000 to cover administrative costs of the cooperative.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Eligible individuals, who wish to obtain discounts on their prescription medicines and who enroll in the medication purchasing cooperative created under the bill, will be subject to a fee to fully offset administrative costs of the cooperative. Agency staff estimates that there are approximately 1.4 million Florida residents ages 65 and older with incomes at or below 250% of the federal poverty level. Assuming initial 30 percent participation, around 420,000 individuals would participate in the program. The fee collections above are calculated such that the anticipated administrative cost is fully funded by membership enrollment fees in the second year. If the anticipated costs and the projected enrollment of 420,000 are realized, the membership fee would be around \$1 per month.

Qualified individuals who enroll in the medication purchasing cooperative would save on their prescribed drug purchases from participating pharmacies.

Pharmacies would bid competitively to serve members of the medication purchasing cooperative created by the bill. Successful bidders would have to offer discounts on drug purchases. Non-



contract pharmacies would be affected by a potential loss of customers or revenues from the cooperative members who would tend to purchase their medications from participating pharmacies.

D. FISCAL COMMENTS:

N/A

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 spend 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 a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

Subsection (3) of section 1. of the bill provides rulemaking authority to the Agency for Health Care Administration for purposes of the cooperative.

C. OTHER COMMENTS:

The sponsor has expressed her intent to offer a strike-everything amendment to further refine the concepts of the bill.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON HEALTH PROMOTION:

Prepared by:

Staff Director:

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Phil E. Williams

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Phil E. Williams