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DATE: March 21, 2001

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

BILL #: CS/HB 133
RELATING TO: Pharmacy Discount Program
SPONSOR(S): Committee on Health Promotion and Representative(s) Argenziano & others

TIED BILL(S):

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

- (1) HEALTH PROMOTION YEAS 10 NAYS 2
 - (2) FISCAL POLICY & RESOURCES
 - (3) COUNCIL FOR HEALTHY COMMUNITIES
 - (4)
 - (5)
-

I. SUMMARY:

CS/HB 133 provides for the creation of the pharmacy discount program as a new optional Medicaid service, subject to specific federal authorization. Under the program, eligible individuals—those who are Medicare recipients and the uninsured--will receive a financial subsidy for prescription drugs equal to the average rebate and any supplemental rebate paid to the Medicaid program by pharmaceutical manufacturers. The bill provides that the program shall not create an entitlement.

The Agency for Health Care Administration is directed to submit a request to the federal Health Care Financing Administration for a service coverage waiver specific to the pharmacy discount program. Eligibility for the program is extended to Florida residents who have incomes up to 300 percent of the federal poverty level (\$25,770 for a family size of 1; \$52,950 for a family size of 4) and who do not have a health insurance program that includes a prescription drug benefit or any separate prescription drug benefit.

The Department of Children and Family Services is directed to determine eligibility for the pharmacy discount program.

The bill's effective date is October 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 pharmacy discount program, as an optional Medicaid service, increases the scope of the Florida Medicaid program.

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.

State Pharmacy Discount Programs

As authorized by the Vermont Legislature, the State of Vermont sought a federal waiver to implement a pharmacy discount program as part of that state's Medicaid program. On November 3, 2000, the federal Health Care Financing Administration (HCFA) approved a waiver permitting the State of Vermont to use the Medicaid program to extend discounts on prescription drugs to about 70,000 people who were not otherwise eligible for the state's Medicaid program. The State of Vermont would allow all seniors who are not already covered by state-funded programs and all other adults without a drug benefit whose income falls below 300 percent of the federal poverty level to receive discounts on their prescription drugs.

On December 13, 2000, the Pharmaceutical Research and Manufacturers of America filed a complaint in the U.S. District Court for the District of Columbia claiming HCFA violated federal law in issuing the waiver. Two areas of concern were (1) that HCFA illegally waived the requirement that beneficiaries make no more than nominal co-payments for Medicaid services; and (2) HCFA allowed Vermont to use the federal Medicaid rebate agreement to impose mandatory rebates on pharmaceutical companies for products that are not entitled to Medicaid program benefits.

On January 19, 2001, the State of Maine's request for a similar waiver was granted by HCFA.

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 a 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]

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:

See the SECTION-BY-SECTION ANALYSIS, which follows.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 409.906, F.S., relating to optional services under the Florida Medicaid program, to specify that such services include the pharmacy discount program to provide subsidized discounts for Medicare recipients and uninsured individuals for the purchase of prescribed drugs, subject to specific federal authorization. The bill provides that the program shall not create an entitlement.

Section 2. Directs the Agency for Health Care Administration to submit a request to the federal Health Care Financing Administration for a service coverage waiver specific to the pharmacy discount program. Eligibility for the program is extended to Florida residents who have incomes up to 300 percent of the federal poverty level (\$25,770 for a family size of 1; \$52,950 for a family size of 4) and who do not have a health insurance program that includes a prescription drug benefit or any separate prescription drug benefit. The Department of Children and Family Services is directed to determine eligibility for the pharmacy discount program. Individuals in the expanded coverage group are to receive a financial subsidy for prescription drugs equal to the average rebate and any supplemental rebate paid to the Florida Medicaid program by pharmaceutical manufacturers.

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

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

An unknown amount will be paid to the State of Florida by pharmaceutical manufacturers in the form of rebates as a result of the bill.

2. Expenditures:

The Agency for Health Care Administration will incur costs to initially establish and to administer the prescription discount program. These costs can likely be absorbed into the Medicaid program.

The Department of Children and Family Services will incur costs relating to the eligibility determination process for the pharmacy discount program.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Eligible individuals purchasing prescribed drugs through this program will receive a discount equivalent to the Medicaid rebate for prescription drugs. That amount at present averages 19 percent.

Pharmaceutical manufacturers would be affected by a potential loss of income to the extent that the discounts to eligible persons in the pharmacy discount program are equal to the average rebate and any supplemental rebate paid to the Florida Medicaid program.

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:

N/A

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C. OTHER COMMENTS:

As amended in the Senate, the companion measure, CS/SB 420 was limited to Medicare beneficiaries who meet income and other requirements in the bill relating to lack of coverage for prescribed drugs. CS/HB 133 does not have this limiting provision, and is applicable to all residents who meet the income and coverage requirements.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee Substitute for HB 133 deletes the medication purchasing cooperative approach in favor of creating a new optional eligibility category under the Florida Medicaid program. The new optional program is established as a non-entitlement, designed to provide a discount on the purchase price of drugs for those eligible for the program.

VII. SIGNATURES:

COMMITTEE ON HEALTH PROMOTION:

Prepared by:

Staff Director:

Phil E. Williams

Phil E. Williams