

By the Committee on Health, Aging, and Long-Term Care; and  
Senator Wasserman Schultz

317-2484-03

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

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

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31 Be It Enacted by the Legislature of the State of Florida:

1           Section 1. Section 409.960, Florida Statutes, is  
2 created to read:

3           409.960 Popular name.--Sections 409.960-409.982 shall  
4 be known by the popular name "LifeSaver Rx Program."

5           Section 2. Section 409.962, Florida Statutes, is  
6 created to read:

7           409.962 LifeSaver Rx Program established; findings;  
8 purpose.--

9           (1) It is the finding of the Legislature that  
10 approximately one in four residents of Florida have no  
11 prescription drug insurance coverage or wholly inadequate  
12 prescription drug insurance coverage. These uninsured  
13 residents pay excessive prices for prescription drugs, far  
14 higher prices than are paid by managed care organizations,  
15 insurance companies, and the Federal Government for the same  
16 medicines and dosages. In many cases, these excessive drug  
17 prices have the effect of denying residents access to  
18 medically necessary care, thereby threatening their health and  
19 safety. Many Florida residents require repeated doctor or  
20 medical clinic appointments, having become sicker because they  
21 could not afford to purchase the prescription drugs prescribed  
22 for them. Many residents are admitted to or treated at  
23 hospitals each year because they cannot afford the  
24 prescription drugs that could have prevented the need for  
25 hospitalization. Many others enter expensive institutional  
26 care settings because they cannot afford the necessary  
27 prescription drugs that could have supported them outside of  
28 an institution. In each of these circumstances, state medical  
29 assistance programs, including the Medicaid program, literally  
30 pay the price. One major reason uninsured residents pay such  
31 high prices for prescription drugs is that, unlike insured

1 residents, they have no prescription benefits manager  
2 negotiating a fair price with drug companies on their behalf.  
3 State government currently provides prescription drugs and  
4 acts as a prescription benefit manager through a variety of  
5 health plans and assistance programs and, in 2001, the  
6 Legislature expanded the state's role in negotiating better  
7 prescription drug prices for Medicaid. State government is the  
8 only agent that, as a practical matter, can play an effective  
9 role as a market participant on behalf of all residents who  
10 are uninsured or underinsured. The state can and should act as  
11 a prescription benefit manager, negotiating drug rebates and  
12 using these funds to reimburse retail pharmacies for offering  
13 lower drug prices.

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

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1 state health assistance programs, including the Medicaid  
2 program.

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

5 409.964 Definitions.--As used in this act, unless the  
6 context otherwise indicates, the term:

7 (1) "Agency" means the Agency for Health Care  
8 Administration.

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

14 (3) "Manufacturer" means a manufacturer of  
15 prescription drugs and includes a subsidiary or affiliate of a  
16 manufacturer.

17 (4) "Participating retail pharmacy" means a retail  
18 pharmacy or other business licensed to dispense prescription  
19 drugs in this state that:

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

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

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

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

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

28 Section 4. Section 409.966, Florida Statutes, is  
29 created to read:

30 409.966 Prescription drug discounts; negotiation of  
31 discounts or rebates; calculation of discounts.--The secretary

1 shall operate the program as a state pharmaceutical assistance  
2 program under 42 U.S.C. s. 1396r-8(c)(1)(C)(i)(III) to provide  
3 discounts to participants for prescription drugs covered by a  
4 rebate agreement.

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

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

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

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

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

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

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

23 Section 5. Section 409.968, Florida Statutes, is  
24 created to read:

25 409.968 Discounted prices for program participants.--

26 (1) Each program participant's payment shall be equal  
27 to the Medicaid allowable charge for the prescription minus  
28 the payment made by the agency. The payment made by the agency  
29 shall include the estimated manufacturer rebate plus the state  
30 subsidy per prescription as provided under this act and the

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1 federal matching share for the state general revenue  
2 contribution.

3 (2) A participating retail pharmacy shall charge the  
4 Medicaid allowable rate for prescription drugs sold to  
5 participants in the program.

6 (3) The participating retail pharmacy shall be  
7 reimbursed by the agency at the agency's manufacturer  
8 estimated rebate amount.

9 (4) The program as established in s. 409.962 is not an  
10 entitlement.

11 Section 6. Section 409.970, Florida Statutes, is  
12 created to read:

13 409.970 Program eligibility.--

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

16 (a) Is a resident of the state;

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

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

22 (d) Has exhausted all third-party prescription  
23 coverage; and

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

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

28 (3) The agency shall establish simple procedures for  
29 enrolling program participants. Such procedures shall include  
30 the assessment of an annual enrollment fee of up to \$50 per  
31 enrollee. The agency shall undertake outreach efforts to build

1 public awareness of the program and maximize enrollment by  
2 eligible residents. Revenues generated from program enrollment  
3 fees and rebates from drug manufacturers shall be used for,  
4 but not be limited to, offsetting state costs to administer  
5 the program, the purchase of prescription drugs, and any  
6 public awareness campaigns.

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

9 409.972 Program operation.--

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

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

20 (3) The agency shall collect from the participating  
21 retail pharmacies utilization data necessary to calculate the  
22 amount of the rebate from the manufacturer or labeler. The  
23 agency shall protect the confidentiality of all information  
24 subject to confidentiality protection under the laws of this  
25 state or federal laws, rules, or regulations.

26 Section 8. Section 409.974, Florida Statutes, is  
27 created to read:

28 409.974 Discrepancies in rebate

29 amounts.--Discrepancies in rebate amounts must be resolved  
30 using the process established in this section.

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1       (1) If there is a discrepancy in the manufacturer's or  
2 labeler's favor between the amount claimed by a participating  
3 retail pharmacy and the amount rebated by the manufacturer or  
4 labeler, the agency, at the agency's expense, may hire a  
5 mutually agreed-upon independent auditor. If a discrepancy  
6 still exists following the audit, the manufacturer or labeler  
7 shall justify the reason for the discrepancy or make payment  
8 to the agency for any additional amount due.

9       (2) If there is a discrepancy against the interest of  
10 the manufacturer or labeler in the information provided by the  
11 agency to the manufacturer or labeler regarding the  
12 manufacturer's or labeler's rebate, the manufacturer or  
13 labeler, at the manufacturer's or labeler's expense, may hire  
14 a mutually agreed-upon independent auditor to verify the  
15 accuracy of the data supplied to the agency. If a discrepancy  
16 still exists following the audit, the agency shall justify the  
17 reason for the discrepancy or refund the manufacturer or  
18 labeler.

19       (3) Following the completion of procedures established  
20 in subsection (1) or subsection (2), the agency, the  
21 manufacturer, or the labeler may request a hearing. Hearings  
22 shall be conducted pursuant to ss. 120.569 and 120.57.  
23 Supporting documentation must accompany the request for a  
24 hearing.

25       Section 9. Section 409.976, Florida Statutes, is  
26 created to read:

27       409.976 Report.--The agency shall provide a report on  
28 the enrollment and financial status of the program to the  
29 Governor, the President of the Senate, and the Speaker of the  
30 House of Representatives by the second week in January each  
31 year.

1           Section 10. Section 409.978, Florida Statutes, is  
2 created to read:

3           409.978 Coordination with other programs.--The  
4 secretary shall combine drug pricing negotiations to maximize  
5 drug rebates when the secretary determines that the  
6 combination of such negotiations is beneficial to both the  
7 LifeSaver Rx Program and another state program, including the  
8 state Medicaid program.

9           Section 11. Section 409.980, Florida Statutes, is  
10 created to read:

11           409.980 Rulemaking.--The agency is authorized to adopt  
12 rules pursuant to ss. 120.536(1) and 120.54 to implement the  
13 provisions of this act. Such rules shall include eligibility  
14 requirements, limits on participation, benefit limitations, a  
15 requirement for generic drug substitution, and other program  
16 parameters comparable to those of the Medicaid program.

17           Section 12. Section 409.982, Florida Statutes, is  
18 created to read:

19           409.982 Waivers.--The agency shall seek any waivers of  
20 federal law, rule, or regulation necessary to implement the  
21 provisions of this act in year 1. In year 2 and thereafter,  
22 the agency shall seek any additional waivers of federal law,  
23 rule, or regulation necessary to implement the provisions of  
24 this act.

25           Section 13. The agency shall contribute toward the  
26 cost of each prescription purchased by the program  
27 participant.

28           Section 14. Section 409.9066, Florida Statutes, is  
29 amended to read:

30           409.9066 Medicare prescription discount program.--  
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1           (1) As a condition of participation in the Florida  
2 Medicaid program or the pharmaceutical expense assistance  
3 program, a pharmacy must agree to charge any individual who is  
4 a Medicare beneficiary and who is a Florida resident showing a  
5 Medicare card when he or she presents a prescription, a price  
6 no greater than the cost of ingredients equal to the average  
7 wholesale price minus 9 percent, and a dispensing fee of  
8 \$4.50.

9           (2) In lieu of the provisions of subsection (1), and  
10 as a condition of participation in the Florida Medicaid  
11 program or the pharmaceutical expense assistance program, a  
12 pharmacy must agree to:

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

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

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18 Discounts under this subsection must be at least as great as  
19 discounts under subsection (1).

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

27           Section 15. By January 1, 2004, the Agency for Health  
28 Care Administration shall submit to the Legislature a report  
29 regarding the cost-effectiveness of, and alternatives to,  
30 using average wholesale price in the pricing of pharmaceutical  
31 products purchased by the Medicaid program.

1           Section 16. The Legislature shall appropriate from the  
2 General Revenue Fund to the Agency for Health Care  
3 Administration an amount that is sufficient to implement the  
4 provisions of this act.

5           Section 17. If any provision of this act or the  
6 application thereof to any person or circumstance is held  
7 invalid, the invalidity shall not affect other provisions or  
8 applications of the act which can be given effect without the  
9 invalid provision or application, and to this end the  
10 provisions of this act are declared severable.

11           Section 18. This act shall take effect upon becoming a  
12 law.

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14                           STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
15   COMMITTEE SUBSTITUTE FOR  
16   Senate Bill 2098

17 This Committee Substitute for Senate Bill 2098 does the  
18 following:

19 Changes the income eligibility, requiring that an individual  
20 have a net family income at or below 200 percent of the FPL in  
21 year one of the program and at or below 300 percent of the FPL  
22 in year two and thereafter.

23 Removes the requirement of a two percent state contribution  
24 from general revenue for each prescription, but retains  
25 language that a state contribution for prescriptions will be  
26 made.

27 Requires the Agency for Health Care Administration to publish  
28 on its website the most recent average wholesale prices for  
29 the 200 drugs most frequently dispensed to the elderly and to  
30 provide a mechanism for consumers to calculate the retail  
31 price that should be paid under the Medicare prescription  
discount program. The agency is required to submit a report by  
January 1, 2004, regarding alternatives to using the average  
wholesale price in pricing drugs purchased by the Medicaid  
Program.