

AN ACT concerning discount prescription drugs for senior citizens.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Short title. This Act may be cited as the Senior Citizens and Disabled Persons Prescription Drug Discount Program Act.

Section 5. Findings. The General Assembly finds that:

(a) Although senior citizens represent 12% of the population, they use on average 37% of prescription drugs that are dispensed.

(b) Senior citizens in the United States without prescription drug insurance coverage pay the highest prices in the world for needed medications.

(c) High prescription drug prices force many Illinois seniors to go without proper medication or other necessities, thereby affecting their health and safety.

(d) Prescription drug prices in the United States are the world's highest, averaging 32% higher than in Canada, 40% higher than in Mexico, and 60% higher than in Great Britain.

(e) Regardless of household income, seniors without prescription drug coverage are often just one serious illness away from poverty.

(f) Reducing the price of prescription drugs would benefit the health and well-being of all Illinois senior citizens by providing more affordable access to needed drugs.

Section 10. Purpose. The purpose of this program is to require the Department of Central Management Services to establish and administer a program that will enable eligible senior citizens and disabled persons to purchase prescription

drugs at discounted prices.

Section 15. Definitions. As used in this Act:

"Authorized pharmacy" means any pharmacy registered in this State under the Pharmacy Practice Act of 1987 and approved by the Department or its program administrator.

"AWP" or "average wholesale price" means the amount determined from the latest publication of the Red Book, a universally subscribed pharmacist reference guide annually published by the Hearst Corporation. "AWP" or "average wholesale price" may also be derived electronically from the drug pricing database synonymous with the latest publication of the Red Book and furnished in the National Drug Data File (NDDF) by First Data Bank (FDB), a service of the Hearst Corporation.

"Department" means the Department of Central Management Services.

"Director" means the Director of Central Management Services.

"Disabled person" means a person unable to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months.

"Drug manufacturer" means any entity (1) that is located within or outside Illinois that is engaged in (i) the production, preparation, propagation, compounding, conversion, or processing of prescription drug products covered under the program, either directly or indirectly by extraction from substances of natural origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis or (ii) the packaging, repackaging, leveling, labeling, or distribution of prescription drug products covered under the program and (2)

that elects to provide prescription drugs either directly or under contract with any entity providing prescription drug services on behalf of the State of Illinois. "Drug manufacturer", however, does not include a wholesale distributor of drugs or a retail pharmacy licensed under Illinois law.

"Eligible senior" means a person who is (i) a resident of Illinois and (ii) 65 years of age or older.

"Prescription drug" means any prescribed drug that may be legally dispensed by an authorized pharmacy.

"Program" means the Senior Citizens and Disabled Persons Prescription Drug Discount Program created under this Act.

"Program administrator" means the entity that is chosen by the Department to administer the program. The program administrator may, in this case, be the Director or a Pharmacy Benefits Manager (PBM) chosen to subcontract with the Director.

"Rules" includes rules adopted and forms prescribed by the Department.

Section 17. Determination of disability. Disabled persons filing applications for participation in the program shall submit proof of disability in such form and manner as the Department shall by rule prescribe. Proof that a claimant is eligible to receive disability benefits under the Federal Social Security Act shall constitute proof of disability for purposes of this Act. Issuance of an Illinois Disabled Person Identification Card stating that the claimant is under a Class 2 disability, as defined in Section 4A of the Illinois Identification Card Act, shall constitute proof that the person named thereon is a disabled person for purposes of this Act. A disabled person not covered under the Federal Social Security Act and not presenting a Disabled Person Identification Card stating that he or she is under a Class 2

disability shall be examined by a physician designated by the Department, and his or her status as a disabled person determined using the same standards as used by the Social Security Administration. The costs of any required examination shall be borne by the person claiming a disability.

Section 20. The Senior Citizens and Disabled Persons Prescription Drug Discount Program. The Senior Citizens and Disabled Persons Prescription Drug Discount Program is established to protect the health and safety of senior citizens and disabled persons. The program shall be administered by the Department. The Department or its program administrator shall (i) enroll eligible seniors and disabled persons into the program, as provided in Section 35 of this Act, to qualify them for a discount on the purchase of prescription drugs at an authorized pharmacy, (ii) enter into rebate agreements with drug manufacturers, as provided under Section 30 of this Act, and (iii) subject to the provisions of Section 47 of this Act, compensate pharmacies participating in the program as provided under Section 25 of this Act.

Section 25. Program administration.

(a) The Department is authorized under this Act to be the program administrator. If the Department is not the program administrator, 90 days after the effective date of this Act, the Department must issue a request for proposals for bidders interested in administering the program. Bidders must compete on the basis of the following minimum criteria:

(1) The Director shall solicit and accept proposals from entities to provide for administration of a program or programs in accordance with rules adopted under Section 45. Proposals must be submitted not later than a

date established by the Director. The Director shall accept only those proposals that specify the following:

(A) The estimated amount of the discount based on the entity's previous experience and how the discount is to be achieved.

(B) The extent that discounts on prescription drugs are to be achieved through rebates, administrative fees, or other fees or discounts in prices that the entity negotiates with drug manufacturers. The proposals shall assure that rebates or discounts will be used to do the following:

(i) reduce costs to cardholders;

(ii) achieve discounts for cardholders;

and

(iii) cover costs for administering the program.

(C) Any other benefits offered to cardholders.

(D) The estimated number and geographic distribution of participating pharmacies in the administrator's pharmacy network.

(E) The plan for pharmacy compensation, pursuant to subsection (e) of this Section.

(F) The method used for determining the prescription drugs to be covered by the program, including the criteria and process for establishing a preferred drug list, if applicable.

(G) How the entity proposes to improve medication management for cardholders, including any program of disease management.

(H) How cardholders and participating pharmacies will be informed of the discounted price negotiated by the entity.

(I) How the entity will handle complaints

about the program's operation.

(J) The entity's previous experience in managing similar programs.

(K) Any additional information requested by the Director.

(2) The Director shall contract with one or more entities to administer a program or programs on the basis of the proposals submitted, but may require an administrator to modify its conduct of a program in accordance with rules adopted under Section 45.

The Director shall adopt rules specifying the period for which a contract will be in effect and may terminate a contract if an administrator fails to conduct a program in accordance with its proposal or with any modifications required by rule. When a contract period ends or a contract is terminated, the Director shall enter into a new contract in the manner specified in this Section for an original contract. Prior to making a new contract, the Director may modify the rules for administration of the program or programs.

(b) As used in this Section, "administrator" includes the administrator's parent company and any subsidiary of the parent company.

(1) No administrator shall sell any information concerning a person who holds a prescription drug discount card, other than aggregate information that does not identify the cardholder, without the cardholder's written consent.

(2) Unless an administrator has the cardholder's written consent, no administrator shall use any personally identifiable information that it obtains concerning a cardholder through the program to promote or sell a program or product offered by the administrator that is not related to the administration of the program.

This subsection (b) does not prohibit an administrator from contacting cardholders concerning participation in or administration of the program, including, but not limited to, mailing a list of pharmacies participating in the program's network or participating in disease management programs.

(3) To the extent that a discount is achieved through rebates, administrative fees, or any other fees or discounts in prices that an administrator negotiates with drug manufacturers, an administrator shall use the rebates or discounts to do the following:

- (A) reduce costs to cardholders;
- (B) achieve discounts for cardholders; and
- (C) cover any administrative costs of the program.

(4) The administrator shall not use any funds generated from rebates, discounts, administrative fees, or other fees to promote its mail order pharmacy operation or the mail order pharmacy operation of an affiliate. This subdivision (b)(4) does not, however, limit the participation of an Illinois-licensed pharmacy under this Act if that pharmacy provides prescription drugs by mail order.

(c) Beginning on January 1, 2004, the amount paid by eligible seniors and disabled persons enrolled in the program to authorized pharmacies for prescription drugs may not exceed prices established as a result of the rebate agreements under Section 30. The eligible seniors and disabled persons shall pay the price determined under Section 30 plus a dispensing fee of \$3.50 per prescription for brand name drug products, single-source drug products, and, for a period of 6 months, newly released generic drug products and \$4.25 per prescription for all other generic drug products, except that the total amount paid by the eligible senior or

disabled person for each prescription drug under this program shall not exceed the usual and customary charge for such prescription.

(d) The contract between the Department and a pharmacy benefits manager must, at a minimum, meet the criteria of subsection (a). The contract must also require notification by the pharmacy benefits manager of any proposed or ongoing activity that involves, directly or indirectly, any conflict of interest on the part of the pharmacy benefits manager. The Department shall ensure that the pharmacy benefits manager complies with the contract and shall adopt all procedures necessary to enforce the contract.

(e) The Department or program administrator shall, subject to the funds available under Section 30 of this Act, compensate authorized pharmacies for prescription drugs dispensed under the program for the difference between the amount paid by the eligible senior or disabled person for prescription drugs dispensed under the program and (i) the AWP minus 12% for brand name drug products, single-source generic drug products, and, for a period of 6 months, newly released generic drug products and (ii) the AWP minus 35% for all other generic drug products. The Department shall compensate a pharmacy under this subsection (e) only if the amount paid by the eligible senior or disabled person has been discounted to a price, including the dispensing fees stated in subsection (c) of this Section, that is less than (i) the AWP minus 12% for brand name drug products, single-source generic drug products, and, for a period of 6 months, newly released generic drug products and (ii) the AWP minus 35% for all other generic drug products.

(f) Beginning on January 1, 2004, the Department or program administrator shall reimburse pharmacies under this Section within 30 days after adjudication of the claim.

Section 30. Manufacturer rebate agreements.

(a) Taking into consideration the extent to which the State pays for prescription drugs under various State programs and the provision of assistance to disabled persons or eligible seniors under patient assistance programs, prescription drug discount programs, or other offers for free or reduced price medicine, clinical research projects, limited supply distribution programs, compassionate use programs, or programs of research conducted by or for a drug manufacturer, the Department, its agent, or the program administrator shall negotiate and enter into rebate agreements with drug manufacturers, as defined in this Act, to effect prescription drug price discounts. The Department or program administrator may establish a preferred drug list as a basis for determining the discounts, administrative fees, or other fees or rebates under this Section.

(b) Rebate payment procedures. All rebates negotiated under agreements described in this Section shall be paid in accordance with procedures prescribed by the Department or the program administrator.

(c) Receipts from rebates shall be used to provide discounts for prescription drugs purchased by eligible seniors and disabled persons and to cover the cost of administering the program, including compensation to be paid to participating pharmacies by the Department or program administrator under subsection (e) of Section 25. Any receipts to be allocated to the Department shall be deposited into the Senior Citizens and Disabled Persons Prescription Drug Discount Program Fund, a special fund hereby created in the State treasury.

Section 35. Program eligibility.

(a) Any person may apply to the Department or its program administrator for participation in the program in the

form and manner required by the Department. The Department or its program administrator shall determine the eligibility of each applicant for the program within 30 days after the date of application. To participate in the program an eligible senior or disabled person whose application has been approved must pay \$25 upon enrollment and annually thereafter and shall receive a program identification card. The card may be presented to an authorized pharmacy to assist the pharmacy in verifying eligibility under the program. The Department shall deposit the enrollment fees collected into the Senior Citizens and Disabled Persons Prescription Drug Discount Program Fund. The moneys collected by the Department for enrollment fees and deposited into the Senior Citizens and Disabled Persons Prescription Drug Discount Program Fund must be separately accounted for by the Department. If 2 or more persons are eligible for any benefit under this Act and are members of the same household, each participating household member shall apply to the Department and pay the fee required for the purpose of obtaining an identification card.

(b) Proceeds from annual enrollment fees shall be used by the Department to offset the administrative cost of this Act. The Department may reduce the annual enrollment fee by rule if the revenue from the enrollment fees is in excess of the costs to carry out the program.

(c) Any person who is eligible for pharmaceutical assistance under the Senior Citizens and Disabled Persons Property Tax Relief and Pharmaceutical Assistance Act is presumed to be eligible for this program. The enrollment fee under this Act is not required for such persons. That person may purchase prescription drugs under this program that are not covered by the pharmaceutical assistance program under the Senior Citizens and Disabled Persons Property Tax Relief and Pharmaceutical Assistance Act by using the identification card issued under the pharmaceutical assistance program.

Section 40. Eligible pharmacies.

(a) The Department or its program administrator shall adopt rules to establish standards and procedures for participation in the program and approve those pharmacies that apply to participate and meet the requirements for participation. Pharmacies in the program administrator's network must also comply with the Department's standards and procedures for participation.

(b) The Department shall establish procedures for properly contracting for pharmacy services, validating reimbursement claims, validating compliance of authorized pharmacies with the conditions for participation required under this Act, and otherwise providing for the effective administration of this Act. The Director, in consultation with pharmacists licensed under the Pharmacy Practice Act of 1987, may enter into a written contract with any other State agency, instrumentality, or political subdivision or with a fiscal intermediary for the purpose of making payments to authorized pharmacies and coordinating the program with other programs that provide payments for prescription drugs covered under the program.

Section 45. Rules. The Department shall adopt rules to implement and administer the program, which shall include the following:

(1) Execution of contracts with pharmacies to participate in the program. The contracts shall stipulate terms and conditions for the participation of authorized pharmacies and the rights of the State to terminate participation for breach of the contract or for violation of this Act or rules adopted by the Department under this Act.

(2) Establishment of maximum limits on the size of prescriptions that are eligible for a discount under the

program, up to a 90-day supply, except as may be necessary for utilization control reasons.

(3) Inspection of appropriate records and audits of participating authorized pharmacies to ensure contract compliance and to determine any fraudulent transactions or practices under this Act.

(4) Specify how a resident may apply to participate in the program.

(5) Specify the circumstances under which the Director may require an administrator to modify its conduct of the program.

(6) Specify the duration of a contract.

(7) Require that an administrator permit any Illinois-licensed pharmacy willing to comply with the requirements of this Act and terms and conditions for participation in the program's network to participate in any network used by the administrator for its program.

(8) Permit an administrator to negotiate with one or more drug manufacturers for discounts in drug prices or rebates.

(9) Permit an administrator to receive any rebate payments from drug manufacturers.

(10) Permit an administrator to develop, administer, and promote a program of disease management pursuant to written agreements between the administrator and pharmacies participating under the program established by this Act.

Section 47. Limit on State's obligation for cost of administration. The State of Illinois is obligated for the cost of administering this program only to the extent of the amount of money collected as enrollment fees under Section 35 of this Act, rebates collected under Section 30 of this Act, and funds appropriated by the General Assembly for the

purpose of this Act.

Section 50. Report on administration of program. The Department shall report to the Governor and the General Assembly by March 1st of each year on the administration of the program under this Act. The report shall include but not be limited to the following:

(1) the number of disabled persons and seniors eligible and enrolled in the program, by county;

(2) the activities undertaken by the State to inform disabled persons and seniors about the program;

(3) the number of prescriptions filled under the program for enrollees, and the estimated savings for enrollees;

(4) a listing of the manufacturers and pharmacies participating in the program;

(5) the amount of enrollment fees and rebates collected under the program, and any additional funds or resources made available to cover the cost of the program;

(6) the itemized annual cost of administering the program; and

(7) findings and recommendations regarding problems and solutions related to the program, together with proposals for changes in the rules, regulations, or laws necessary to improve the administration of the program.

Section 990. The State Finance Act is amended by adding Section 5.595 as follows:

(30 ILCS 105/5.595 new)

Sec. 5.595. The Senior Citizens and Disabled Persons Prescription Drug Discount Program Fund.

Section 99. Effective date. This Act takes effect on July 1, 2003.