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HOUSE BILL NO. 1403

Offered January 24, 2000

A BILL to amend the Code of Virginia by adding in Title 32.1 a chapter numbered 15, consisting of sections numbered 32.1-366 through 32.1-372, relating to the Virginia Prescription Drug Payment Assistance Program; funding from proceeds of the Master Tobacco Settlement Agreement.

Patrons—Christian, Armstrong, Baskerville, Brink, Darner, Diamonstein, Johnson, Plum, Scott, Shuler, Spruill, Tate, Van Landingham and Watts; Senators: Byrne, Howell, Miller, Y.B., Puckett and Whipple

Referred to Committee on Appropriations

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 32.1 a chapter numbered 15, consisting of sections numbered 32.1-366 through 32.1-372, as follows:

CHAPTER 15.

VIRGINIA PRESCRIPTION DRUG PAYMENT ASSISTANCE PROGRAM.

§ 32.1-366. Definitions.

"Board" means the Board of Medical Assistance Services.

"Department" means the Department of Medical Assistance Services.

"Eligible person" shall mean a person eligible for the Virginia Prescription Drug Payment Assistance Program pursuant to § 32.1-367.

"Fund" means the Prescription Assistance Fund established pursuant to § 32.1-370.

"Master Settlement Agreement" means the settlement agreement and related documents between the Commonwealth and leading United States tobacco product manufacturers dated November 23, 1998, and including the Consent Decree and Final Judgment entered in the Circuit Court of the City of Richmond on February 23, 1999, Chancery Number HJ-2241-4.

"Prescription drugs" means drugs and supplies that have been approved as safe and effective by the Federal Food and Drug Administration or are otherwise legally marketed in the United States, including items related to diabetes management, if not covered by Medicare, that a physician has deemed medically necessary for the diagnosis and/or treatment of the patient. For the purposes of this chapter, prescription drugs may include cost-effective over-the-counter pharmaceutical products if prescribed by a health care provider authorized to prescribe prescription drugs as an alternative to more costly drugs. Prescription drugs covered under this chapter shall be limited and subject to the provisions of § 32.1-368 and the rules and regulation adopted pursuant thereto.

"Program" means the Prescription Drug Payment Assistance Program established by this chapter.

§ 32.1-367. Eligibility.

To be eligible for payment assistance for prescription drugs a person shall:

1. Be a U.S. citizen or a lawfully admitted alien;
2. Have income that is less than 200 percent of the federal poverty level or have prescription drug expenses that exceed forty percent of his annual income;
3. Be a resident of the Commonwealth;
4. Be ineligible for Medicaid prescription benefits;
5. Be (i) ineligible for a prescription drug benefit through a Medicare supplemental policy or any other third party payer prescription benefit or (ii) not receiving a prescription drug benefit through a Medicare supplemental policy or any other third party payer prescription benefit; and
6. Be (i) aged sixty-five or over or (ii) be between the ages nineteen and sixty-four and be otherwise eligible for benefits under Title II of the Social Security Act (Federal Old Age, Survivors, and Disability Insurance Benefits).

§ 32.1-368. Program established; administration; limitations; manufacturer rebate requirement.

A. There is hereby established the Prescription Drug Payment Assistance Program. The Program shall be administered by the Department, with such moneys as may be available therefor in the Fund.

B. Payment assistance shall not exceed \$2,500 per fiscal year to assist each eligible person in the purchase of prescription drugs.

C. The Department shall restrict covered prescription drugs covered under the Program to those manufactured by pharmaceutical companies that agree to provide manufacturer rebates. The Department shall establish a rebate program to collect rebates from pharmaceutical manufacturers in an amount consistent with a Medicaid rebate of 15.1 percent of the Average Manufacturer Price for

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HB1403

60 innovator/brand name products and eleven percent of the Average Manufacturer Price for
61 non-innovator/generic products.

62 D. Eligible persons shall be required to make a co-payment, which shall not exceed twenty-five
63 percent of the acquisition cost but shall be no lower than five dollars, subject to the regulations
64 promulgated pursuant to subdivision 3 of § 32.1-369.

65 E. The Director of the Department shall provide to eligible persons in the Program a clear, written
66 explanation defining the scope of the Program's coverage, the amount of the cost-sharing requirements
67 and any limitations on access to covered prescription drugs. The Department shall provide notice when
68 seventy-five percent of the enrollee's \$2,500 per fiscal year cap has been expended. The Department
69 shall also notify persons of the process to appeal a decision denying reimbursement for prescription
70 drugs or denying a person's eligibility for the Program.

71 F. Services shall begin on the first day of the month, following the month that eligibility is
72 determined. Eligible individuals will receive an identification card certifying their enrollment in the
73 Program.

74 G. No drug prescription shall exceed 100 dosing units or a thirty-four-day supply, whichever is
75 greater.

76 H. No system of administration shall make a direct cash payment to any eligible person.

77 I. The Department shall require a mandatory point-of-sale claims submission within fourteen days
78 unless extenuating circumstances, as defined by the Department, exist.

79 § 32.1-369. Regulations of the Board.

80 The Board shall promulgate such regulations as are necessary to implement the Program in a
81 cost-effective manner and to ensure the Program is the payer of last resort for prescription drugs. The
82 regulations shall:

83 1. Limit application to the Program to a specific open-enrollment period, with coverage effective as
84 of the date the application is approved;

85 2. Establish an annual enrollment fee in an amount not to exceed twenty dollars to be paid by all
86 eligible persons in the Program to defray administrative expenses. Payment of any such fee shall be
87 credited to the Fund;

88 3. Establish guidelines providing that (i) required co-payment amounts may vary when a generic
89 drug is purchased by eligible persons in the Program and (ii) the co-payment may be waived in cases of
90 severe hardship; and

91 4. Establish reasonable procedures and criteria for determining the eligibility of applicants.

92 § 32.1-370. Pharmacist duty to collect co-payment.

93 A pharmacist shall not dispense or provide a covered prescription drug to an eligible person until
94 the eligible person makes the required co-payment.

95 § 32.1-371. Prescription Assistance Fund established.

96 A. Money received by the Commonwealth pursuant to the Master Settlement Agreement shall be
97 deposited in the state treasury subject to the special nonreverting funds established by subsection B of
98 this section, § 9-385 and § 32.1-360 and shall be included in general revenue calculations for purposes
99 of subsection C of § 58.1-3524 and subsection B of § 58.1-3536.

100 B. There is hereby created in the state treasury a special nonreverting fund to be known as the
101 Prescription Assistance Fund. The Fund shall be established on the books of the Comptroller. Twenty
102 percent of the annual amount received by the Commonwealth from the Master Settlement Agreement
103 shall be paid into the state treasury and credited to the Fund. In addition, manufacturer rebates
104 collected pursuant to subsection C of § 32.1-368 shall be deposited in to the Fund. The Fund shall also
105 consist of such moneys as shall be appropriated by the General Assembly. Interest earned on moneys in
106 the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including
107 interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in
108 the Fund.

109 B. Moneys in the Fund shall be used solely for the purposes set forth in this chapter; however,
110 overhead and administrative costs incurred by the Department in its implementation of this Program
111 pursuant to this chapter shall, to the extent such moneys are available in the Fund, be paid from
112 manufacturer rebates collected pursuant to subsection C of § 32.1-368. Expenditures and disbursements
113 from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written
114 request signed by the Director of the Department or his designee.

115 § 32.1-372. Annual report.

116 The Department shall maintain data to evaluate the cost and effectiveness of the Program, and shall
117 submit a report annually to the Governor and the General Assembly regarding the implementation and
118 effectiveness of the program established pursuant to this chapter. The report shall review the financial
119 impact that the enactment of this chapter will have on the cost of prescription drugs and the availability
120 of prescription drugs for eligible persons in the Commonwealth.

121 2. That there is hereby appropriated to the Prescription Assistance Fund twenty percent of all

122 amounts received by the Commonwealth from the Master Settlement Agreement between the
123 effective date of this act and June 30, 2002. All remaining funds received by the Commonwealth
124 from the Master Settlement Agreement between the effective date of this act and June 30, 2002,
125 shall be deposited in the general fund.

126 3. That the amounts appropriated by this act shall be subject to reduction in the event that the
127 federal government takes as recovery of the federal share of Medicaid expenditures money from
128 the amounts received by the Commonwealth from the Master Settlement Agreement. Should such
129 recovery by the federal government occur, the appropriations provided by this act to the
130 Prescription Assistance Fund shall be twenty percent of the net amounts received from the Master
131 Settlement Agreement, after any amounts recovered by the federal government are subtracted
132 from all amounts received from the Master Settlement Agreement.

133 4. That notwithstanding any contrary provisions of the 2000-2002 general appropriations act, and
134 until June 30, 2002, the provisions of this act shall prevail over any conflicting provision of any
135 other law.

136 5. That the Board of Medical Assistance Services shall promulgate the first set of regulations to
137 implement the provisions of Chapter 15 (§ 32.1-366 et seq.) of Title 32.1 to be effective within 280
138 days of the enactment of this provision.

139 6. That this act shall take effect on July 1, 2000; however, the Program created by this act shall
140 not be implemented until the earlier of (i) ninety days following the promulgation of regulations
141 by the Board of Medical Assistance Services as set forth in § 32.1-373 or (ii) July 1, 2000.