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HOUSE BILL NO. 2633

Offered January 10, 2001

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.

Patron—Christian

Referred to Committee on Health, Welfare and Institutions

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 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 regulations 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. As set forth in the appropriation act, have income at or below 150 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; however, nothing shall prohibit the enrollment of a person in the Program during the period in which their Medicaid eligibility is determined;
5. Not be receiving a prescription drug benefit through a Medicare supplemental policy or any other third party payor prescription benefit as of July 1, 2001; and
6. Be (i) aged sixty-five or over or (ii) be between the ages of 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. The Department may contract with third-party administrators to provide administrative services for the Program. Duties of the third-party administrators may include, but shall not be limited to, enrollment, outreach, eligibility determination, data collection, premium payment and collection, financial oversight and reporting and such other services necessary for the administration of the Program.

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.

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

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

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

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

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

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

76 § 32.1-369. Regulations of the Board.

77 The Board shall promulgate such regulations as are necessary to implement the Program in a
78 cost-effective manner and to ensure the Program is the payor of last resort for prescription drugs. The
79 regulations shall:

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

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

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

88 4. Establish reasonable procedures and criteria for determining the eligibility of applicants.
89 However, nothing shall prohibit the enrollment of a person in the Program during the period in which
90 their Medicaid eligibility is determined; and

91 5. Develop a comprehensive statewide community-based outreach plan to enroll eligible persons in
92 the Program and, if so eligible, in Medicaid.

93 § 32.1-370. Pharmacist duty to collect co-payment.

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

96 § 32.1-371. Prescription Assistance Fund established.

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

101 B. There is hereby created in the state treasury a special nonreverting fund to be known as the
102 Prescription Assistance Fund. The Fund shall be established on the books of the Comptroller. Ten
103 percent of the annual amount received by the Commonwealth from the Master Settlement Agreement
104 shall be paid into the state treasury and credited to the Fund. In addition, manufacturer rebates and
105 copayments collected pursuant to § 32.1-368 and enrollment fees collected pursuant to § 32.1-369 shall
106 be deposited into the Fund. The Fund shall also consist of such moneys as shall be appropriated by the
107 General Assembly and any federal funds available for this purpose. Interest earned on moneys in the
108 Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including
109 interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in
110 the Fund.

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

117 D. This chapter shall not be construed as creating any legally enforceable right or entitlement to
118 prescription drug coverage on the part of any eligible person or any right or entitlement to
119 participation. The Program created in this chapter shall only be available to the extent that funds are
120 appropriated therefor.

121 § 32.1-372. Annual report.

122 *The Department or third-party administrator shall maintain data to evaluate the cost and*
123 *effectiveness of the Program, and shall submit a report annually by November 1 to the Governor and*
124 *the General Assembly regarding the implementation and effectiveness of the Program established*
125 *pursuant to this chapter. The report shall review the financial impact that the enactment of this chapter*
126 *will have on the cost of prescription drugs and the availability of prescription drugs for eligible persons*
127 *in the Commonwealth.*

128 2. That there is hereby appropriated to the Prescription Assistance Fund five percent of all
129 amounts received by the Commonwealth from the Master Settlement Agreement between the
130 effective date of this act and June 30, 2002. All remaining funds received by the Commonwealth
131 from the Master Settlement Agreement between the effective date of this act and June 30, 2002,
132 shall be deposited in the general fund.

133 3. That the amounts appropriated by this act shall be subject to reduction in the event that the
134 federal government takes as recovery of the federal share of Medicaid expenditures money from
135 the amounts received by the Commonwealth from the Master Settlement Agreement. Should such
136 recovery by the federal government occur, the appropriations provided by this act to the
137 Prescription Assistance Fund shall be five percent of the net amounts received from the Master
138 Settlement Agreement, after any amounts recovered by the federal government are subtracted
139 from all amounts received from the Master Settlement Agreement.

140 4. That notwithstanding any contrary provisions of the 2000-2002 general appropriation act,
141 including the terms of § 4-11.00, and until June 30, 2002, the provisions of this act shall prevail
142 over any conflicting provision of any other law.

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

146 6. That this act shall take effect on July 1, 2001; however, the Program created by this act shall
147 not be implemented until the earlier of (i) ninety days following the promulgation of regulations
148 by the Board of Medical Assistance Services as set forth in § 32.1-369 or (ii) July 1, 2002.