Department of Planning and Budget
2002 Fiscal Impact Statement

1. **Bill Number** HB104

   House of Origin ☒ Introduced ☐ Substitute ☐ Engrossed

   Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. **Patron** Morgan

3. **Committee** Health, Welfare & Institutions

4. **Title** Prescription Drug Payment Assistance Program.

5. **Summary/Purpose:**

   This bill establishes a program to be administered by the Department of Medical Assistance Services (DMAS), modeled on Delaware's Prescription Drug Payment Assistance Program, to assist eligible elderly and disabled Virginians in paying for their prescription drugs. Payment assistance will not be permitted to exceed $2,500 per person per year. DMAS will be able to contract with third-party administrators to provide administrative services that include enrollment, outreach, eligibility determination, data collection, premium payment and collection, financial oversight and reporting. The benefit is limited to prescription drugs manufactured by pharmaceutical companies that agree to provide manufacturer rebates.

   Eligible individuals must have incomes at or below 150 percent of the federal poverty level (FPL) or have prescription drug expenses that exceed 40 percent of their annual income, as set forth in the Appropriations Act. These individuals must also be age 65 or older, or eligible for federal Old Age, Survivors and Disability Insurance Benefits, not be receiving a prescription drug benefit through a Medicare supplemental policy or other third-party payor prescription benefit as of July 1, 2002, and be ineligible for Medicaid prescription benefits. However, nothing shall prohibit the enrollment of a person in the program during the period in which his or her Medicaid eligibility is determined.

   Enrollees will receive an identification card to be presented to pharmacists and will start receiving the benefit the month after their eligibility is determined. The card shall conform to administrative standards developed and published by the National Council for Prescription Card Programs. Benefits will be paid to pharmacies under a point-of-service claims procedure to be established by DMAS. There will be a co-payment for each prescription, which in general will not exceed 25 percent of the cost, but not less than five dollars. All licensed pharmacists shall be allowed to participate in the program so long as the provider is willing to abide by the terms and conditions the Board of Medical Assistance Services (BMAS) establishes to participate.

   Money to pay the claims would come from the newly established Prescription Assistance Fund, which would be financed by 10 percent of the annual proceeds received by the Commonwealth under the Master Tobacco Settlement Agreement and any federal funds available for this purpose. Administrative costs are to be paid from the pharmaceutical manufacturer rebates to the extent available and the $20 annual enrollment fees.

BMAS shall develop a comprehensive statewide community-based outreach plan to enroll eligible persons and DMAS shall report annually on the program's implementation. No entitlement to prescription drug coverage on the part of any eligible person or any right or entitlement to participation is created and such coverage shall only be available to the extent that funds are available.

6. Fiscal Impact Estimates are: Preliminary

6a. Expenditure Impact: (see Section 8)

Item 322, Subprogram 47901

Fiscal Year	*Dollars*	*Positions*	*Fund*
2001-02	$0	0.0	GF
2001-02	$0	0.0	NGF
2002-03	$3,235,912	2.0	GF
2002-03	$0	0.0	NGF
2003-04	$2,902,583	2.0	GF
2003-04	$0	0.0	NGF

Item 322, Subprogram 47902

Fiscal Year	*Dollars*	*Positions*	*Fund*
2001-02	$0	0.0	GF
2001-02	$0	0.0	NGF
2002-03	$94,955	0.0	GF
2002-03	$0	0.0	NGF
2003-04	$77,708	0.0	GF
2003-04	$0	0.0	NGF

Item 328, Subprogram 46400

Fiscal Year	*Dollars*	*Positions*	*Fund*
2001-02	$0	0.0	GF
2001-02	$0	0.0	NGF
2002-03	$14,765,505	0.0	GF
2002-03	$0	0.0	NGF
2003-04	$12,996,444	0.0	GF
2003-04	$0	0.0	NGF

Total Department of Medical Assistance Services

Fiscal Year	*Dollars*	*Positions*	*Fund*
2001-02	$0	0.0	GF
2001-02	$0	0.0	NGF
2002-03	$18,096,371	2.0	GF
2002-03	$0	0.0	NGF
2003-04	$15,976,735	2.0	GF
2003-04	$0	0.0	NGF

Note: The difference between last year's fiscal impact estimates and the current ones is due to two reasons. First, last year's bill mandated that five percent of the Master Settlement Agreement (MSA) funding be applied to this program in FY 2002 and 10 percent be applied in FY 2003. This year's bill requires 10 percent funding for each year of the 2002-2004 biennium. Second, the estimated MSA amounts have changed since last year's fiscal impact estimates.

6b. Revenue Impact: (see Revenue under Section 8)

Fiscal Year	*Dollars*	*Positions*	*Fund*
2001-02	$0	0.0	GF
2001-02	$0	0.0	NGF
2002-03	$3,056,094	0.0	GF
2002-03	$0	0.0	NGF
2003-04	$2,678,984	0.0	GF
2003-04	$0	0.0	NGF

7. **Budget amendment necessary:** Yes, Item 322, Subprograms 47901 and 47902; Item 328, Subprogram 46400 (Due to the non-Medicaid nature of this program, a new subprogram would have to be created.)

8. **Fiscal implications:**

Administrative and Support Services

DMAS proposes to implement the program as a Medicaid look-alike program using the Medicaid Management Information System (MMIS). In addition, the agency feels that the co-payment amount should be the same as what is currently being paid by Medicaid recipients. DMAS plans on manually tracking the annual benefit amount to ensure that the maximum per person reimbursement rate is not exceeded. It believes that by implementing the program in this way, the program can proceed without requiring extensive time and expense needed to modify both its current and new Medicaid Management Information Systems (MMIS).

DMAS estimates that some systems work will be required to create a new eligibility code on the system and ensure that the benefits for these individuals are limited to pharmacy claims. The estimated cost of implementing the systems changes in FY 2003 is approximately $100,000 (GF). In addition, the agency estimates $13,328 (GF) in start-up support costs in FY 2003. However, implementation of a new prescription assistance program during the testing phase of the new MMIS would create problems. The vendor is in the process of ending its systems testing. DMAS has begun its use acceptance testing. If additional modifications of the current MMIS were required to implement this program, the effect would be increased cost to the new system and further implementation delays.

Besides systems development costs, there will also be claims processing costs. The fiscal agent currently charges DMAS $.3618 per processed claim. The total claims processing cost is dependent upon the number of individuals covered under the program. Based on the enrollment estimates for this proposed program, DMAS estimates claims processing costs of $94,955 in FY 2003 and $77,708 in FY 2004. DMAS estimates approximately 28.77 claims per recipient in FY 2003 and 28.61 claims in FY 2004 based on the estimated cost per full year enrollee, divided by DMAS' average payment per recipient for the Medicaid "over 65" population, which is $56.26 in FY 2003 and $60.51 in FY 2004. These average payment per recipient estimates result from subtracting a $5 drug co-payment that is on the current system from DMAS' forecasted average cost of pharmacy claims.

The bill requires that an annual enrollment fee of $20 be collected from each person enrolled to cover a portion of the administrative costs. The agency feels that this collection requirement and the other demands placed upon its staff are such that sufficient attention cannot be paid to the implementation and daily operation of the program. DMAS estimates that in order to sufficiently monitor the program, it would require two additional positions: a Band 5, Program Specialist III and Band 4, Administrative and Program Specialist. The cost of these positions with benefits is $122,583 (GF) per year.

The bill gives DMAS the option to contract out the operation of the program. The agency estimates that if it were to contract out the operation through a stand-alone system, it would cost approximately $4.3 million in one-time development costs. Because this is a state sponsored program, the funding would all be in general fund dollars. If the federal government ever implemented a nationwide prescription program, Virginia may be able to recoup some of its investment. In addition to one-time costs, DMAS estimates that a stand-alone system would cost approximately $2.49 per enrollee per month in claims processing costs. However, these estimates are based on information provided to DMAS by a private contractor that provides this service to other states. Given the uncertainty of DMAS' exercising this option, these costs are not included in this bill's fiscal impact estimates.

In addition, DMAS acknowledges that the Department of Social Services (DSS) would perform the eligibility work for this program. DMAS would have to establish a memorandum of understanding (MOU) defining DSS' role in the program and the reimbursement it would receive for the rendered services. DMAS estimates that the reimbursement cost could be as high as $20 per applicant. This estimate is based on operations experience with similar programs in the past.

Although the funding would limit the number of individuals served, that would not stop every individual in the potential population from applying. The estimated annual cost for DSS to perform the eligibility determination for this program would be approximately $2.8 million; assuming that approximately 139,000 applications were processed each year. Given that eligible individuals would either have to have incomes at or below 150 percent of the FPL or have prescription drugs expenses that exceed 40 percent of his annual income, annual determinations would be necessary. In addition, DSS would need $220,000 in FY 2003 for one-time costs, including adjustments to the Application Benefit Delivery Automation Project (ADAPT).

Revenue

The $20 enrollment fee will cover a portion of the administrative costs. Based upon the assumed enrollment level, DMAS expects $182,463 in enrollment fee revenue in FY 2003 and $150,165 in enrollment fee revenue in FY 2004.

DMAS believes that it will be difficult to estimate the impact of the rebate proposal of this bill, which it feels is unlikely to produce significant revenue in this program. The Medicaid program is a federal mandate and pharmaceutical companies participating in Medicaid are required to participate in this program. The rebate program proposed in this bill would not be a federal mandate. DMAS estimates that it would have a more difficult time operating it with no guarantee of rebates. The agency currently recovers approximately 19.4 percent of gross pharmacy expenditures under the Medicaid program.

While some states, such as Connecticut, have been successful implementing pharmaceutical manufacturer rebates in state only programs, others have not. However, DMAS believes that if it were able to receive the same level of rebates realized under Medicaid, collections would be approximately $2.9 million in FY 2003 and $2.5 million in FY 2004. DMAS asserts that these estimates are best-case scenario estimates.

This bill promotes a prescription payment program currently in operation in Delaware. During the 2001 Session of the General Assembly, DMAS contacted people in Delaware to discuss the success of the pharmaceutical rebate part of their program. Delaware verbally

reported to DMAS that after more than a year of operation, the program had yielded limited rebates.

The problem in those states which are attempting to establish in-state-only rebate programs appears to be that the agencies that are responsible for implementing and operating the programs have been give little legal authority to enforce compliance from the participating pharmaceutical companies. At least under the Medicaid program, the pharmaceutical companies realize that if they wish to participate in the states' Medicaid programs, they must also agree to participate in Medicaid's pharmaceutical rebate program. If states wish their in-state-only rebate programs to work, they must provide sufficient authority to the responsible agencies to enforce compliance from the participating pharmaceutical companies. Otherwise, they cannot expect the programs to generate substantial revenues.

Medical Assistance Services (Non-Medicaid)

Census data indicates that there is between 170,000 and 190,000 Virginians over age 65 at or below 150 percent of the federal poverty guidelines. There are approximately 60,000 Medicaid-eligible individuals over the age of 65 who would not be eligible for the proposed program. In addition, there are approximately 29,000 aged and disabled low-income individuals who are eligible to receive some Medicaid benefits, but who do not receive coverage for pharmacy prescriptions through Medicaid. DMAS estimates that the total potential population for this program could be between 139,000 and 159,000 individuals.

As the bill indicates, it will be up to the BMAS to develop a statewide community-based outreach plan to enroll eligible individuals. However, since this in not an entitlement program like Medicaid, enrollment will be limited to available funding. Given this non-entitlement status, DMAS will enroll individuals on a first-come, first-served basis.

The estimated cost per recipient is $1,618 per full year enrollee for FY 2003. This cost is based on information based on information from other states that show an average cost of approximately $1,400 per full year enrollee in similar programs. DMAS took the $1,400 figure and inflated it by the forecasted growth in pharmacy cost per unit from FY 2001 to FY 2003. The cost per recipient was inflated to $1,731 for FY 2004. Based on the estimated amount Virginia will receive from the master tobacco settlement agreement, DMAS believes that the program will cover 9,123 recipients in FY 2003 and 7,508 in FY 2004.

Tobacco Settlement Funding

The Tobacco Settlement funding issue is under consideration in the General Assembly. The way the current Settlement funding is drafted, 50 percent of the available funds would go to the Tobacco Indemnification and Community Revitalization Endowment and 10 percent would be allocated to the Virginia Tobacco Settlement Endowment. This leaves approximately 40 percent (the state's allocation) for undesignated purposes. However, currently HB 650 requires that up to 40 percent of the state's allocation of the Tobacco Settlement funding could be used to support the Education and Economic Development Trust Fund.

9. **Specific agency or political subdivisions affected:** DMAS and DSS

10. **Technical amendment necessary:** Due to the bill's impact on the new MMIS project, DMAS recommends that the effective date be delayed to July 1, 2003.

11. Other comments: The major issue with this bill is that it depends on a limited funding source. Although there is no way to predict when or if this funding source may cease, there is always the potential that the situation with the tobacco companies could change, thus reducing or possibly eliminating these settlement funds. An even larger concern is what to do with the individuals who become dependent upon this program when the funding source does change. Would the Commonwealth remove individuals who are already in the program? In addition, if the Tobacco Settlement funding were eliminated, would the Commonwealth end the program, scale it back, or make it a statewide program, thus opening it up to the entire potential population? The potential cost of a statewide program could exceed $200 million per year. Of course, the loss of settlement funds would mean that this program would have to be supported by state general funds, if the program were expected to continue. In that case, cost containment measures including, but not limited to, the use of a formulary, the introduction of a Wholesale Acquisition Cost or the redefinition of the Usual and Customary reimbursement rates should be considered.

This bill is the companion to SB 192.

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cc: Secretary of Health and Human Resources