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SENATE BILL NO. 841

Offered January 12, 2005

Prefiled January 10, 2005

A BILL to amend and reenact § 32.1-366 of the Code of Virginia and to amend the Code of Virginia by adding in Title 32.1 a chapter numbered 16, consisting of sections numbered 32.1-368 through 32.1-374, relating to the Virginia Prescription Drug Payment Assistance Program; funding from proceeds of the Master Tobacco Settlement Agreement.

Patron—Deeds

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That § 32.1-366 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Title 32.1 a chapter numbered 16, consisting of sections numbered 32.1-368 through 32.1-374, as follows:

§ 32.1-366. Virginia Health Care Fund established.

A. There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia Health Care Fund, hereafter referred to as the "Fund." The Fund shall be established on the books of the Comptroller and any moneys remaining in the Fund at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. For purposes of the Comptroller's preliminary and final annual reports required by § 2.2-813, however, all deposits to and disbursements from the Fund shall be accounted for as part of the general fund of the state treasury.

B. All revenue received by the Commonwealth pursuant to the provisions of §§ 58.1-1001 and 58.1-1018 and Article 2.1 (§ 58.1-1021.01 et seq.) of Chapter 10 of Title 58.1 shall be paid into the state treasury and deposited to the Fund. The Comptroller shall also deposit ~~40~~*30* percent of the Commonwealth's allocation pursuant to the Master Settlement Agreement with tobacco product manufacturers, as defined in § 3.1-1106, to the Fund. The Fund shall also consist of all recoveries received during a fiscal year resulting from expenditures incurred in the Medicaid program during a prior fiscal year or years to the extent that such amounts represent recoveries of state funds that would otherwise be deposited to the general fund of the state treasury.

CHAPTER 16.

VIRGINIA PRESCRIPTION DRUG PAYMENT ASSISTANCE PROGRAM.

§ 32.1-368. Definitions.

"Board" means the Board of Medical Assistance Services.

"Department" means the Department of Medical Assistance Services.

"Eligible person" means a person eligible for the Virginia Prescription Drug Payment Assistance Program pursuant to § 32.1-369.

"Fund" means the Prescription Assistance Fund established pursuant to § 32.1-373.

"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 § 32.1-370 and the rules and regulations adopted pursuant thereto.

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

§ 32.1-369. 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 40 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 his 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 at the time he is to be enrolled in the Program; and

6. Be (i) aged 65 or older or (ii) be between the ages of 19 and 64 and be otherwise eligible for benefits under Title II of the Social Security Act (Federal Old-Age, Survivors, and Disability Insurance Benefits).

§ 32.1-370. 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 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 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 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. Under the rebate program, the manufacturer rebate amount for a rebate period with respect to each dosage form and strength of a single source drug or innovator multiple source drug shall equal the product of the total number of units of each dosage form and strength paid for under the Program in the rebate period and the greater of (i) the difference between the average manufacturer price and the best price (as reported for the most recent quarter to the United States Secretary of Health and Human Services pursuant to section 1927(b) of the Social Security Act [42 U.S.C. 1396r-8(b)]) for such prescription drug or (ii) 15.1 percent of the reported average manufacturer price for such prescription drug. For all other prescription drugs, the rebate amount shall equal the product of the total number of units of each dosage form and strength paid for under the Program and 11 percent of the reported average manufacturer price for such prescription drug.

D. Eligible persons shall be required to make a co-payment, which shall not exceed 25 percent of the acquisition cost, but shall be no lower than $5, subject to the regulations promulgated pursuant to subdivision 3 of § 32.1-371.

E. The Director of the Department or third-party administrator shall provide to eligible persons in the Program a clear, written explanation defining the scope of the Program's coverage, the amount of the cost-sharing requirements, and any limitations on access to covered prescription drugs. The Department or third-party administrator shall provide notice when 75 percent of the enrollee's $2,500 per fiscal year cap has been expended. The Department or third-party administrator shall also notify persons of the process to appeal a decision denying reimbursement for prescription drugs or denying a person's eligibility for the Program.

F. Services shall begin on the first day of the month following the month that eligibility is determined. Eligible individuals will receive an identification card certifying their enrollment in the Program. The card shall conform to administrative standards developed and published by the National Council for Prescription Drug Programs.

G. The Department shall establish guidelines for maximum dosing units or supply of prescription drugs.

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

I. The Department shall require a mandatory point-of-sale claims submission within 14 days unless extenuating circumstances, as defined by the Department, exist.

J. The Program shall allow any licensed pharmacist in the Commonwealth to participate in the Program so long as the pharmacist is willing to abide by the terms and conditions the Board establishes.

K. Payment amounts to pharmacists for providing prescription drugs shall be reasonable to cover the costs of items, including the cost of the product and all costs of dispensing the product.

L. The Program shall not vary pharmacist payment amounts based on the size of the entity dispensing the prescription, and shall not vary beneficiary cost sharing amounts based on the source of dispensing or method of distribution of the prescription.

M. The Program shall require the use of approved generic prescription drugs. If eligible persons elect to take a brand-name prescription drug for which an approved generic prescription drug is available, the eligible person shall pay the price difference between the brand-name prescription drug and the approved generic prescription drug, in addition to the co-payment.

§ 32.1-371. Regulations of the Board.

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

The regulations shall:

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

2. Establish an annual enrollment fee in an amount not to exceed $20 to be paid by all eligible persons in the Program. Payment of any such fee shall be credited to the Fund, and shall be used to defray administrative expenses;

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

4. Establish terms and conditions for licensed pharmacist participation;

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

6. Establish the Virginia Prescription Drug Payment Assistance Program Advisory Committee, which shall consist of no more than 20 citizens who represent the following organizations: Community Pharmacy, Long-Term Care/Consultant Pharmacy, the Virginia Pharmacists Association, the Virginia Association of Chain Drug Stores, and the Pharmaceutical Research and Manufacturers of America; or who have experience with the issues related to prescription drug coverage and senior citizens. The Advisory Committee shall work with the Department to implement the Program and report on its progress annually to the Board and to the Chairmen of the House Appropriations and Senate Finance Committees; and

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

§ 32.1-372. Pharmacist duty to collect co-payment.

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

§ 32.1-373. Prescription Assistance Fund established.

A. Money received by the Commonwealth pursuant to the Master Settlement Agreement shall be deposited in the state treasury subject to the provisions governing the special nonreverting funds established by § 3.1-1109.1, subsection B of § 3.1-1111and § 32.1-360, and shall be included in general revenue calculations for purposes of subsection C of § 58.1-3524 and subsection B of § 58.1-3536.

B. There is hereby created in the state treasury a special nonreverting fund to be known as the Prescription Assistance Fund. The Fund shall be established on the books of the Comptroller. Ten percent of the annual amount received by the Commonwealth from the Master Settlement Agreement shall be paid into the state treasury and credited to the Fund. In addition, manufacturer rebates and co-payments collected pursuant to § 32.1-370 and enrollment fees collected pursuant to § 32.1-371 shall be deposited into the Fund. The Fund shall also consist of such moneys as shall be appropriated by the General Assembly and any federal funds available for this purpose. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund.

C. Moneys in the Fund shall be used solely for the purposes set forth in this chapter; however, overhead and administrative costs incurred by the Department in its implementation of this Program pursuant to this chapter shall, to the extent such moneys are available in the Fund, be paid from manufacturer rebates collected pursuant to subsection C of § 32.1-370. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director of the Department or his designee.

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

§ 32.1-374. Annual report.

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

2. That there is hereby appropriated to the Prescription Assistance Fund 10 percent of all amounts received by the Commonwealth from the Master Settlement Agreement.

3. That the Board of Medical Assistance Services shall adopt the first set of regulations to

implement the provisions of Chapter 16 (§ 32.1-368 et seq.) of Title 32.1 of the Code of Virginia to be effective within 280 days of the enactment of this provision.

4. That this act shall take effect on July 1, 2005; however, the Program created by this act shall not be implemented until the earlier of (i) 90 days following the promulgation of regulations by the Board of Medical Assistance Services as set forth in § 32.1-371 or (ii) July 1, 2006.