

## SENATE BILL NO. 473

INTRODUCED BY ELLIOTT, ROBERTS

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A PRESCRIPTION DRUG EXPANSION PROGRAM UNDER MEDICAID; AUTHORIZING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO IMPLEMENT THE PRESCRIPTION DRUG EXPANSION PROGRAM UNDER MEDICAID; PROVIDING AN ANNUAL ~~ENROLLMENT~~ APPLICATION FEE FOR THE PROGRAM; AUTHORIZING A LOAN FROM THE BOARD OF INVESTMENTS FOR THE STARTUP COST OF THE PROGRAM; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE."

WHEREAS, the Legislature finds that the cost of prescription drugs is a major threat to the public health of Montana citizens; and

WHEREAS, other states have implemented innovative prescription drug access and affordability legislation that can be adapted to meet Montana's needs; and

WHEREAS, the Legislature finds it necessary to provide some relief for the high cost of prescription drugs by using an expanded Medicaid program for which reimbursement will be sought through Medicaid rebates and federal reimbursement programs.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 7], unless the context requires otherwise, the following definitions apply:

(1) "Average wholesale price" means the wholesale price charged on a specific commodity that is assigned by the drug manufacturer and is listed in a nationally recognized drug pricing file.

(2) "Department" means the department of public health and human services provided for in Title 2, chapter 15, part 22.

(3) "Discounted price" means a price that is less than or equal to the average wholesale price, minus a percentage between 6% and 25% determined by the department pursuant to [section 2], ~~plus the dispensing fee provided under the medicaid program under Title 53, chapter 6.~~

(4) "Gross household income" has the meaning provided in 15-30-171.

(5) "Manufacturer" means a manufacturer of prescription drugs and includes a subsidiary or affiliate of a manufacturer.

(6) "Participating retail pharmacy" means a retail pharmacy located in this state or another business licensed to dispense prescription drugs in this state that is medicaid-approved.

(7) "Program" means the medicaid prescription drug program provided for in [section 2].

**NEW SECTION. Section 2. Prescription drug expansion program -- rules.** (1) ~~The~~ BY JULY 1, 2004, OR UPON SECURING ANY NECESSARY WAIVERS, THE department shall provide for an expansion of prescription drug benefits under the medicaid program by offering prescription drugs at a discounted price to qualified individuals whose income is at a level set by the department at ~~up to 300%~~ OR BELOW 200% of the federal poverty level. ~~The~~ SUBJECT TO SUBSECTION (7), THE department shall charge an annual ~~enrollment~~ APPLICATION fee of \$25 for the program. The ~~enrollment~~ APPLICATION fee must be deposited in the medicaid prescription drug rebate account established in subsection (2).

(2) There is a medicaid prescription drug rebate account in the state special revenue fund to the credit of the department. All money received by the state as rebates from pharmaceutical manufacturers for the medicaid prescription drug expansion program must be deposited in the account. The money in the account, which is administered by the department, must be used to expand medicaid prescription drug benefits. Interest on account balances accrues to the account. The purpose of the account is to:

(a) reimburse participating retail pharmacies for the ~~discounted price less~~ DISCOUNT ON the average wholesale price of prescription drugs provided to qualified residents pursuant to [sections 1 through 7]; and

(b) reimburse the department for contracted services, administrative costs, associated computer costs, professional fees paid to participating retail pharmacies, and other reasonable program costs.

(3) The department shall provide for sufficient personnel to ensure efficient administration of the program. The extent and the magnitude of the program must be determined by the department on the basis of the calculated need of the recipient population and available funds. The department may not spend more on this program than is available through appropriations, federal or other grants, and other established and committed funding sources. The department may accept, for the purposes of carrying out this program, federal funds appropriated under any federal law relating to the furnishing of free or low-cost drugs to disadvantaged, elderly, and disabled individuals, may take action that is necessary for the purposes of carrying out that federal law, and may accept from any other agency of government, individual, group, or corporation funds that may be available

1 to carry out [sections 1 through 7].

2 (4) The department may adopt rules relating to the conduct of this program. The rules may be based  
3 upon rules adopted in ~~Hawaii~~ MAINE ~~OTHER STATES~~ to administer a similar ~~program~~ PROGRAMS.

4 (5) The department shall adopt rules to establish the discounted price to be charged to participants in  
5 the program. The department may establish a discounted price to encourage the use of generic drugs over  
6 higher-cost brand-name drugs.

7 (6) The department shall establish by rule eligibility based upon the applicant's family income as  
8 provided in [section 3]. The total income may not exceed ~~300%~~ 200% of the federal poverty level. The  
9 department may adopt rules defining income. In establishing eligibility based upon income, the department shall  
10 take into account the amount of funding available for the program. The department shall issue enrollment cards  
11 to eligible individuals.

12 (7) ESTABLISHMENT OF THE PRESCRIPTION DRUG EXPANSION PROGRAM IS CONTINGENT UPON APPROVAL BY  
13 THE FEDERAL GOVERNMENT THAT THE PROGRAM IN [SECTIONS 1 THROUGH 7] WILL QUALIFY FOR FEDERAL FINANCIAL  
14 PARTICIPATION UNDER FEDERAL LAWS IMPLEMENTING THE MEDICAID PROGRAM. THE DEPARTMENT MAY ADOPT RULES  
15 NECESSARY TO IMPLEMENT CONDITIONS REQUIRED BY FEDERAL LAW OR CONDITIONS REQUIRED AS PART OF THE FEDERAL  
16 GOVERNMENT'S AGREEMENT TO WAIVE CERTAIN REQUIREMENTS OF FEDERAL LAW.

17 (8) IF PROGRAM COSTS ARE EXPECTED TO EXCEED THE LEGISLATIVE AUTHORIZATION FOR THE PROGRAM, THE  
18 DEPARTMENT SHALL ADJUST DISCOUNTED PRICES, THE APPLICATION FEE, OR ELIGIBILITY STANDARDS TO MAINTAIN THE  
19 PROGRAM WITHIN THE AVAILABLE FUNDING.

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21 NEW SECTION. Section 3. Eligibility -- income determination. (1) To be eligible for the program,  
22 an individual must be:

23 (a) at least 62 years of age; ~~or~~  
24 (b) 18 years of age or older and determined to be disabled by the standards of the federal social security  
25 program; OR

26 (C) ELIGIBLE FOR MENTAL HEALTH SERVICES PURSUANT TO 53-21-702(2).

27 (2) ~~Individuals~~ SUBJECT TO [SECTION 2(8)], INDIVIDUALS are eligible for the program if the gross household  
28 income is at or below the amount set by the department, which may not be more than ~~300%~~ 200% of the federal  
29 poverty level.

1        **NEW SECTION. Section 4. Specifications for administration of program.** (1) The department shall  
2        adopt specifications for the administration and management of the program. Specifications may include but are  
3        not limited to program objectives, accounting and handling practices, supervisory authority, and an evaluation  
4        methodology. The department shall apply for any waivers of federal law that are necessary to implement the  
5        program.

6        **(2) INFORMATION DISCLOSED BY MANUFACTURERS DURING NEGOTIATIONS AND ALL TERMS AND CONDITIONS**  
7        **NEGOTIATED BETWEEN THE DIRECTOR AND MANUFACTURERS AND ALL INFORMATION REQUESTED OR REQUIRED UNDER**  
8        **THE PROGRAM MUST BE KEPT CONFIDENTIAL, EXCEPT AS THE DEPARTMENT DETERMINES IS NECESSARY TO CARRY OUT**  
9        **THE PROGRAM. THE DEPARTMENT SHALL COMPLY WITH THE BUDGET NEUTRALITY PROVISIONS REQUIRED BY THE UNITED**  
10       **STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES FOR THE GRANTING OF ANY WAIVERS.**

11       **(3) THE DEPARTMENT MAY NOT USE ACCESS RESTRICTIONS, SUPPLEMENTAL REBATES, OR A PREFERRED DRUG**  
12       **LIST TO COMPLY WITH THE BUDGET NEUTRALITY PROVISIONS WHEN NEGOTIATING WITH THE FEDERAL GOVERNMENT FOR**  
13       **THIS WAIVER. THESE RESTRICTIONS DO NOT APPLY TO OTHER COMPONENTS OF THE MEDICAID OR MENTAL HEALTH**  
14       **SERVICES PLAN OR DRUGS PROVIDED IN THOSE PROGRAMS. THESE RESTRICTIONS APPLY ONLY TO THE PRESCRIPTION**  
15       **DRUG EXPANSION PROGRAM PROVIDED FOR IN [SECTION 2].**

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17       **NEW SECTION. Section 5. Appeals.** An eligibility determination made by the department based on  
18       information provided by the department of revenue is final, subject to appeal in accordance with the appeal  
19       process established in the medicaid program.

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21       **NEW SECTION. Section 6. Obligations of department.** The department shall establish simplified  
22       procedures for determining eligibility and issuing Montana prescription enrollment cards to qualified individuals  
23       under [section 2] and shall undertake outreach efforts to build public awareness of the program and maximize  
24       enrollment of qualified individuals. The department may adjust the requirements and terms of the program to  
25       accommodate any new federally funded prescription drug programs.

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27       **NEW SECTION. Section 7. Contracting.** The department may contract for the administration of any  
28       components of the program, including but not limited to outreach, eligibility, claims, administration, and drug  
29       rebate recovery and redistribution.

NEW SECTION. **Section 8. Loan for startup costs.** The department of public health and human services may apply for a loan from the board of investments under the revolving loan program provided for in 17-5-1605 to pay the startup costs of the program provided for in [sections 1 through 7].

NEW SECTION. **Section 9. Codification instruction.** [Sections 1 through 7] are intended to be codified as an integral part of Title 53, and the provisions of Title 53 apply to [sections 1 through 7].

NEW SECTION. **Section 10. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**NEW SECTION. SECTION 11. CONTINGENT VOIDNESS.** IF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES IS UNABLE TO OBTAIN A WAIVER THAT INCLUDES PERSONS WHO ARE ELIGIBLE FOR MENTAL HEALTH SERVICES PURSUANT TO 53-21-702(2), THE DEPARTMENT SHALL NOTIFY THE CODE COMMISSIONER AND [SECTION 3(1)(C)] IS VOID.

**NEW SECTION. Section 12. Effective date.** [This act] is effective July 1, 2003.

**NEW SECTION. SECTION 13. TERMINATION.** [SECTION 4(3)] TERMINATES JUNE 30, 2005.

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