
A BILL FOR AN ACT

RELATING TO THE STATE PHARMACY ASSISTANCE PROGRAM.

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

1 SECTION 1. Prescription drugs have become an increasingly
2 important part of health care, especially among older adults.
3 Prescription drugs have also become the most expensive component
4 of health care, accounting for approximately two-thirds of
5 health care costs.

6 In 2002, the legislature adopted the Hawaii Rx program,
7 intended to help a large population of Hawaii residents better
8 afford their prescription drugs through a discount program,
9 thereby improving the overall health of Hawaii residents,
10 promoting healthy communities, and protecting public health and
11 welfare. In 2004, the program was amended to become the Rx plus
12 program. Implemented in July 2005, Rx plus has enabled
13 thousands of Hawaii residents, regardless of age, to take
14 advantage of discounted prices for their prescription drug needs
15 when no other insurance or payor are available to them.

16 In 2005, in anticipation of the new Medicare Modernization
17 Act's Part D program which took effect on January 1, 2006, the
18 state medicare part D state pharmacy assistance program was



1 created. The state medicare part D program covers the co-
2 payments for medicare and medicaid dual eligible clients to
3 ensure a smooth transition of prescription drug coverage from
4 medicaid to medicare.

5 The federal Medicare Modernization Act of 2005 also
6 provides special relief for qualified state pharmacy assistance
7 programs. Both the Rx plus program and the state medicare part
8 D program are recognizable under federal law as state pharmacy
9 assistance programs and, if they are combined under an umbrella
10 program and approved as a single federally recognized program,
11 could receive enhanced benefits from the federal Centers for
12 Medicare and Medicaid Services.

13 This Act would consolidate the provisions of both the Rx
14 plus program and the state medicare part D program into a single
15 state pharmacy assistance program for which the State could then
16 seek approval from the federal Centers for Medicare and Medicaid
17 Services to recognize this newly consolidated program as a
18 federally qualified state pharmacy assistance program to receive
19 enhanced benefits.

20 Through this consolidation, the state medicare part D
21 program would remain the same and its enrollees would be
22 identified as "tier one enrollees" and the Rx plus program would



1 remain the same and its enrollees would be identified as "tier
2 two enrollees." In addition, this Act would provide
3 prescription drug assistance for a subset of the Rx plus
4 population, identified as the "tier three enrollees", who may be
5 at risk of becoming medicaid eligible and for whom the State
6 will seek approval from the federal Centers for Medicare and
7 Medicaid Services to allow the mandating of rebates from
8 prescription drug manufacturers resulting in greater discounts.

9 The State of Hawaii will continue to receive pharmacy
10 discounts for individuals in the Rx plus program with incomes up
11 to three hundred fifty per cent of the federal poverty level.
12 With federal Centers for Medicare and Medicaid Services
13 approval, the State will also be able to begin mandating rebates
14 from pharmaceutical companies for prescription drugs purchased
15 by individuals in the Rx plus program who are at risk of
16 qualifying for medicaid with incomes equal to or less than three
17 hundred per cent of the federal poverty level as approved by the
18 federal Centers for Medicare and Medicaid Services.

19 The State of Hawaii may also be able to combine the
20 purchasing power of these two programs to negotiate larger
21 discounts, similar to federal government and private health
22 insurers, as approved by the federal Centers for Medicare and



1 Medicaid Services. Finally, combining both programs into a
2 federally qualified state pharmacy assistance program
3 streamlines operations and promotes effective administration.

4 The federal Centers for Medicare and Medicaid Services is
5 requiring a state statute before it will consider a request for
6 approval of the income eligibility for the medicaid at-risk
7 population and set the percentage of state contribution that
8 will be required toward the cost of prescription drugs for the
9 at-risk population, which will allow the mandating of rebates
10 for this group.

11 This Act, to be known as the "Hawaii Prescription Drug
12 Affordability Act of 2007", seeks to further drive down the cost
13 of prescription drugs for Hawaii's uninsured, underinsured, low-
14 income, elderly, and disabled residents.

15 SECTION 2. Chapter 346, part XV, Hawaii Revised Statutes,
16 is amended by adding five new sections to be appropriately
17 designated and to read as follows:

18 "§346- Program goals. The legislature finds that
19 affordability is critical in providing Hawaii residents with
20 access to prescription drugs. This section is enacted by the
21 legislature to enable the State to make prescription drugs more
22 affordable for qualified Hawaii residents and thereby improve



1 the overall health of Hawaii residents, promote healthy
2 communities, and protect the public health and welfare. The
3 legislature also intends that the program be integrated as much
4 as possible with other state health programs. It is not the
5 intention of the legislature for this section to discourage
6 employers from offering to pay, or from paying, for prescription
7 drug benefits for their employees, or to supplant employer-
8 sponsored prescription drug benefit plans.

9 §346- Hawaii Rx plus program. There is established
10 within the department the Hawaii Rx plus program.

11 §346- Hawaii Rx plus preferred prescription drug list.

12 (a) All prescription drugs listed on the Hawaii Rx plus
13 preferred drug list established in subsection (c) shall be
14 available to Hawaii Rx plus program enrollees at the medicaid
15 discount price, or less. The Hawaii Rx plus preferred
16 prescription drug list shall offer an additional "secondary
17 discount price," or less, on preferred prescription drugs, to be
18 reimbursed through the Hawaii state pharmacy assistance program
19 special fund.

20 (b) The department shall establish secondary discounts for
21 prescription drugs covered by a rebate agreement and shall



1 promote the use of safe, efficacious, and cost-effective
2 prescription drugs, taking into consideration:

- 3 (1) Reduced prices for state and federally capped
4 prescription drug programs;
- 5 (2) Differential dispensing fees;
- 6 (3) Administrative costs of the department; and
- 7 (4) The recommendation of the pharmacy and therapeutic
8 committee.

9 (c) The department shall establish a Hawaii Rx plus
10 preferred prescription drug list that includes but is not
11 limited to:

- 12 (1) Prescription drugs listed on the State's medicaid
13 preferred prescription drug list;
- 14 (2) Any other prescription drugs listed on the Hawaii Rx
15 plus preferred prescription drug list pursuant to this
16 section; and
- 17 (3) Generic prescription drugs that are priced, using a
18 maximum allowable cost list, as determined by the
19 department.

20 (d) The pharmacy and therapeutic committee shall review
21 and recommend prescription drugs for placement on the Hawaii Rx
22 plus preferred prescription drug list, striving to identify the



1 safest and most efficacious prescription drugs that are
2 available at the lowest cost. The committee's recommendations
3 may take into consideration any of the following factors:

4 (1) Therapeutic value for the disease or condition under
5 treatment;

6 (2) Clinical efficacy;

7 (3) Safety;

8 (4) Cost; and

9 (5) Other relevant factors as determined by the committee.

10 (e) When considering categories of prescription drugs
11 designed to treat specialized chronic medical conditions and
12 diseases, the committee shall consult with physicians and other
13 health care professionals with specialized clinical knowledge
14 and expertise in this area, either in their capacity as
15 consultants serving on a subcommittee of the committee, or as
16 physicians or pharmacists with a practice or specialty in
17 chronic diseases.

18 (f) The determination of a prescription drug's safety and
19 efficacy shall be consistent with the standards set forth in the
20 peer-reviewed literature and other available sources, including
21 but not limited to:



1 (1) The American Hospital Formulary Service Drug
2 Information;

3 (2) The United States Pharmacopoeia Drug Information;

4 (3) The DRUGDEX System; and

5 (4) The American Medical Association Drug Evaluations.

6 (g) The determination of a prescription drug's net cost
7 shall consider the pharmacy reimbursement amount authorized
8 under section 346- , as adjusted by manufacturer's rebates to
9 be paid to the department. The committee shall determine that a
10 prescription drug has no significant clinical or safety
11 advantages over one or more alternative prescription drugs when
12 used for a given purpose before it may consider the prescription
13 drug's net cost.

14 §346- Participating and nonparticipating manufacturers.

15 (a) The names of manufacturers that enter and do not enter into
16 rebate agreements pursuant to this part shall be deemed public
17 information. The department shall release this information to
18 health care providers and the public.

19 (b) The department or administrator may also provide to
20 health care providers information about the relative cost of
21 prescription drugs produced by manufacturers that enter into
22 rebate agreements compared to the cost of prescription drugs



1 produced by those that do not enter into rebate agreements, as
2 allowed by law.

3 §346- Pharmacy reimbursement. (a) A pharmacy shall
4 submit claims to the department to verify the amount charged to
5 tier two and tier three program participants. On a schedule to
6 be determined by the department, the department shall reimburse
7 each pharmacy for the discounts of prescription drugs provided
8 to program participants.

9 (b) The department shall collect pharmacy use data
10 necessary to calculate the amount of the manufacturer rebate
11 under section 346- . The department shall protect the
12 confidentiality of information received as required under state
13 or federal law, rule, or regulation.

14 (c) The department shall not impose transaction charges on
15 participating pharmacies that submit claims or receive payments
16 under the program."

17 SECTION 3. Chapter 346, Hawaii Revised Statutes, is
18 amended by amending the title of part XV to read as follows:

19 " [+] PART XV. [+] HAWAII STATE PHARMACY ASSISTANCE PROGRAM"

20 SECTION 4. Section 346-341, Hawaii Revised Statutes, is
21 amended as follows:



1 1. By adding fifteen new definitions to be appropriately
2 inserted and to read:

3 "Administrator" means the director.

4 "Discount" means the amount by which the price of a
5 prescription drug sold by a pharmacy is reduced as determined by
6 the department.

7 "Hawaii Rx plus program" means the prescription drug
8 discount program that provides discounts to qualified Hawaii
9 residents who are uninsured or underinsured through manufacturer
10 rebates and pharmacy discounts.

11 "Hawaii state pharmacy assistance program" means the
12 program established pursuant to section 346-342 that pays the
13 amount of co-payments for prescription drugs for eligible
14 seniors and disabled individuals under the medicare part D drug
15 benefit and the prescription drug discounts for the Hawaii Rx
16 plus program.

17 "Initial discount price" as it pertains to a prescription
18 drug means the price that the department pays medicaid
19 participating pharmacies to purchase the prescription drug for
20 its medicaid members.



1 "Manufacturer" means anyone who is engaged in
2 manufacturing, preparing, propagating, compounding, processing,
3 packaging, repackaging, or labeling a prescription drug.

4 "Participating pharmacy" or "retail pharmacy" means a
5 retail pharmacy located in this State, or another business
6 licensed to dispense prescription drugs in this State, that
7 elects to participate in the program.

8 "Pharmacy and therapeutic committee" means the committee
9 established by the department that advises the state medicaid
10 director on the Hawaii Rx plus preferred prescription drug list.

11 "Preferred prescription drug" includes but is not limited
12 to:

- 13 (1) A prescription drug listed on the State's medicaid
14 preferred prescription drug list;
- 15 (2) An antipsychotic prescription drug;
- 16 (3) An antidepressant prescription drug;
- 17 (4) A chemotherapy prescription drug;
- 18 (5) An antiretroviral prescription drug;
- 19 (6) An immunosuppressive prescription drug; and
- 20 (7) Any other prescription drug listed on the Hawaii Rx
21 plus preferred prescription drug list pursuant to this
22 part.



1 "Program" means the Hawaii state pharmacy assistance
2 program.

3 "Secondary discount price" as it pertains to a prescription
4 drug means the initial discount price less any further discounts
5 paid out of the Hawaii state pharmacy assistance program special
6 fund.

7 "State medicare part D program" means the medicare part D
8 state pharmacy assistance program that provides co-payments for
9 prescription drugs for qualified Hawaii residents.

10 "Tier one enrollee" means a resident who qualifies for the
11 state medicare part D program.

12 "Tier two enrollee" means a resident who qualifies for the
13 Hawaii Rx plus program and whose household income is equal to or
14 less than three hundred fifty per cent of the federal poverty
15 level.

16 "Tier three enrollee" means a resident who qualifies for
17 the Hawaii Rx plus program and whose household income is equal
18 to or less than three hundred per cent of the federal poverty
19 level as approved by the federal Centers for Medicare and
20 Medicaid Services."

21 2. By amending the definitions of "asset test" and
22 "contractor" to read:



1 ""Asset test" means the asset limits for eligibility in the
2 ~~[state pharmacy assistance program]~~ state medicare part D
3 program as defined by the Medicare Modernization Act and any
4 amendments thereto.

5 "Contractor" means the person, partnership, limited
6 liability company, or corporate entity that has an approved
7 contract with the department to administer any component of the
8 Hawaii state pharmacy assistance program as established under
9 this part."

10 3. By amending the definition of "enrollee" to read:

11 ""Enrollee" means a resident of this State who meets the
12 conditions specified in this part and in departmental rules
13 relating to eligibility for participating in the Hawaii state
14 pharmacy assistance program and whose application for enrollment
15 in the Hawaii state pharmacy assistance program has been
16 approved by the department."

17 SECTION 5. Section 346-342, Hawaii Revised Statutes, is
18 amended to read:

19 " ~~[+] §346-342 [—State]~~ Hawaii state pharmacy assistance
20 program. (a) There is established within the department the
21 Hawaii state pharmacy assistance program[-], which shall provide
22 benefits for enrollees in the state medicare part D program and



1 the Hawaii Rx plus program. Provided that there are no
2 federally approved prescription drug plans available in the
3 State that provide a full coverage prescription drug benefit,
4 the [~~state pharmacy assistance program~~] state medicare part D
5 program may coordinate the prescription drug coverage with [~~the~~]
6 any benchmark federal medicare part D prescription drug plan
7 benefit, including related supplies, as determined by the
8 department, to each resident who meets the eligibility
9 requirements as outlined in section 346-343. The Hawaii Rx plus
10 program shall combine the purchasing power of all qualified
11 residents to enable the State to reduce prescription drug costs,
12 as approved by the federal Centers for Medicare and Medicaid
13 Services, and further improve the quality of health care for
14 qualified Hawaii residents in the program, thereby improving the
15 overall health of Hawaii residents, promoting healthy
16 communities, and protecting the public health and welfare.

17 (b) The department may provide enrollment assistance to
18 eligible individuals into the [~~state pharmacy assistance~~
19 ~~program.~~] state medicare part D program. Enrollment for
20 medicaid dual eligible persons shall begin no later than
21 October 1, 2005.



1 (c) ~~[The]~~ For the state medicare part D program, the
 2 department shall allow any willing benchmark prescription drug
 3 plan approved by the federal Centers for Medicare and Medicaid
 4 Services to provide the coordination of benefits between the
 5 ~~[State's medicare prescription drug program]~~ state medicare part
 6 D program and the federal medicare part D drug benefit.

7 (d) The department may administer the Hawaii state
 8 pharmacy assistance program or contract with a third party or
 9 parties in accordance with chapter 103F to administer any single
 10 component or combination of components of the Hawaii state
 11 pharmacy assistance program, including outreach, eligibility,
 12 enrollment, claims, administration, rebate negotiations and
 13 recovery, and redistribution, ~~[in order]~~ to coordinate the
 14 prescription drug benefits of the Hawaii state pharmacy
 15 assistance program and the federal medicare part D drug benefit.

16 (e) Any contract with ~~[third parties to administer any~~
 17 ~~component of the state pharmacy assistance program]~~ a contractor
 18 shall be established either at no cost to the State, or on a
 19 contingency-fee basis and with no up-front costs to the State,
 20 as may be negotiated by the department.

21 (f) Any contract with ~~[third parties to administer any~~
 22 ~~component of state pharmacy assistance program]~~ a contractor



1 shall prohibit the contractor from receiving any compensation or
2 other benefits from any pharmaceutical manufacturer
3 participating in the Hawaii state pharmacy assistance program.

4 (g) A prescription drug manufacturer [~~or labeler~~] that
5 sells prescription drugs in the State may enter into a rebate
6 agreement with the department. The rebate agreement may be
7 agreed upon by the manufacturer [~~or the labeler~~] to make rebate
8 payments to the department each calendar quarter or according to
9 a schedule established by the department.

10 (h) The department or contractor may negotiate the amount
11 of the rebate required from a manufacturer [~~or labeler~~] in
12 accordance with this part.

13 (i) The department or contractor [~~may~~] shall take into
14 consideration the rebate calculated under the medicaid rebate
15 program pursuant to title 42 United States Code Section 1396r-8,
16 the average [~~wholesale~~] manufacturer price of prescription
17 drugs, and any other cost data related to prescription drug
18 prices and price discounts.

19 (j) The department or contractor shall use their best
20 efforts to obtain the best possible rebate amount.

21 (k) The department may prescribe the application and
22 enrollment procedures for prospective enrollees.



1 (1) The department shall conduct ongoing quality assurance
2 activities similar to those used in the State's medicaid
3 program.

4 (m) A manufacturer that sells prescription drugs in the
5 State shall enter into a rebate agreement with the department as
6 approved by the federal Centers for Medicare and Medicaid
7 Services."

8 SECTION 6. Section 346-343, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "**§346-343 Eligibility.** (a) All residents of the State
11 shall be eligible to participate in the Hawaii state pharmacy
12 assistance program; provided that the applicant[+] meets the
13 following eligibility requirements:

14 (1) Tier one enrollee:

15 [~~1~~] (A) Is a resident of Hawaii;

16 [~~2~~] (B) Is sixty-five years or older, or is disabled and
17 receiving a social security benefit;

18 [~~3~~] (C) Has a household income [~~at or below~~] equal to or
19 less than one hundred fifty per cent of the federal
20 poverty level;

21 [~~4~~] (D) Meets the asset test; [~~and~~]



1 [~~4~~5] (E) Is not a member of a retirement plan who is
2 receiving a benefit from the Medicare Modernization
3 Act [~~7~~]; and

4 (F) Is medicaid dual eligible for or receiving
5 medicare part D prescription drug benefit; and

6 (2) Tier two enrollee:

7 (A) Is a resident of Hawaii;

8 (B) Has a household income equal to or less than
9 three hundred fifty per cent of the federal
10 poverty level; and

11 (C) Lacks prescription drug coverage or has exceeded
12 the extent of the resident's prescription drug
13 benefits; and

14 (3) Tier three enrollee:

15 (A) Is a resident of Hawaii;

16 (B) Has a household income equal to or less than
17 three hundred per cent of the federal poverty
18 level, as approved by the federal Centers for

19 Medicare and Medicaid Services; and

20 (C) Lacks prescription drug coverage or has exceeded
21 the extent of the resident's prescription drug
22 benefits.



1 program and maximize the enrollment of eligible
 2 residents; and
 3 (3) May adjust the requirements and terms of the program
 4 by rule to accommodate any federally funded or
 5 authorized prescription drug program."

6 SECTION 7. Section 346-344, Hawaii Revised Statutes, is
 7 amended to read as follows:

8 "§346-344 Benefits. (a) For ~~[persons meeting the~~
 9 ~~eligibility requirements in section 346-343,]~~ tier one
 10 enrollees, the Hawaii state pharmacy assistance program may pay
 11 all or some of the co-payments required under the federal
 12 medicare part D pharmacy benefit program, subject to the
 13 sufficiency of funds in the Hawaii state pharmacy assistance
 14 program special fund, as determined by the department.

15 (b) ~~[The state pharmacy assistance program]~~ For tier one
 16 enrollees, the state medicare part D program is the payor of
 17 last resort subject to the sufficiency of funds in the Hawaii
 18 state pharmacy assistance program special fund, as determined by
 19 the department.

20 (c) The ~~[state pharmacy assistance program]~~ benefits for
 21 tier one enrollees shall be funded with state appropriations,
 22 including funds derived from revenues to the State from rebates



1 paid by pharmaceutical manufacturers pursuant to section
2 346-342(g), and with savings resulting from medicare
3 prescription drug coverage for the medicaid dual eligible
4 population.

5 (d) For tier two and tier three enrollees, each retail
6 pharmacy participating in the Hawaii Rx plus program shall sell
7 prescription drugs to qualified residents at the initial
8 discount price, as determined by the department pursuant to this
9 part.

10 (e) Beginning July 1, 2004, a participating pharmacy shall
11 offer the initial discount price.

12 (f) No later than July 1, 2008, a participating pharmacy
13 shall offer the secondary discount price to tier three
14 enrollees, if available.

15 (g) The benefits for tier two and tier three enrollees
16 shall be funded with state appropriations, including funds, as
17 approved by the federal Centers for Medicare and Medicaid
18 Services, derived from revenues to the State from rebates paid
19 by pharmaceutical manufacturers pursuant to section 346-342(g)
20 and to Title 42 United States Code Section 1396r-8."

21 SECTION 8. Section 346-345, Hawaii Revised Statutes, is
22 amended to read as follows:



1 " ~~[+]~~ §346-345 ~~[]~~—~~Special~~ Hawaii state pharmacy assistance
 2 program special fund. (a) There is established within the
 3 state treasury to be administered by the department, the Hawaii
 4 state pharmacy assistance program special fund, into which shall
 5 be deposited:

- 6 (1) All moneys received from manufacturers that pay
- 7 rebates as provided in section 346-342 (g) ;
- 8 (2) Appropriations made by the legislature to the fund;
- 9 and
- 10 (3) Any other revenues designated for the fund.
- 11 (b) Moneys in the Hawaii state pharmacy assistance program
 12 special fund may be used for:

- 13 (1) Reimbursement payments to participating pharmacies for
- 14 co-payments required under the federal medicare part D
- 15 pharmacy benefit program as provided to [~~state~~
- 16 ~~pharmacy assistance program participants,~~] tier one
- 17 enrollees;
- 18 (2) Reimbursement payments to participating pharmacies for
- 19 discounts provided to tier two and tier three
- 20 enrollees;
- 21 ~~[-2-]~~ (3) The costs of administering the Hawaii state
 22 pharmacy assistance program, including salary and

1 benefits of employees, computer costs, and contracted
2 services as provided in section 346-342(d); and
3 ~~[(3)]~~ (4) Any other purpose deemed necessary by the
4 department for the purpose of operating and
5 administering the Hawaii state pharmacy
6 ~~[+]~~assistance~~[+]~~ program.

7 All interest on special fund balances shall accrue to the
8 special fund. Upon dissolution of the Hawaii state pharmacy
9 assistance program special fund, any unencumbered moneys in the
10 fund shall lapse to the general fund.

11 (c) The department shall expend all ~~[revenues]~~ moneys
12 received from rebates paid by pharmaceutical manufacturers
13 pursuant to section 346-342(g) to pay for the benefits to
14 enrollees in the Hawaii state pharmacy assistance program, the
15 costs of administering the program, and reimbursement of
16 medicaid pharmaceutical costs~~[-]~~; provided that any mandatory
17 rebate revenues shall not be used for administrative program
18 costs, and general funds shall be used to pay for a percentage
19 of the secondary discount price unless otherwise approved by the
20 federal Centers for Medicare and Medicaid Services."

21 SECTION 9. Part XIII of chapter 346, Hawaii Revised
22 Statutes, is repealed.



1 SECTION 10. The department of human services shall conduct
 2 a study to gather information on the size of the target
 3 population, utilization data, and other information as needed
 4 for the department to identify the amount of the appropriation
 5 needed to implement the secondary discount price and other costs
 6 of the program. The department shall submit a report of its
 7 findings and recommendations from this study to the legislature
 8 no later than twenty days prior to the convening of the regular
 9 session of 2008.

10 SECTION 11. There is appropriated out of the general
 11 revenues of the State of Hawaii the sum of \$ or so
 12 much thereof as may be necessary for fiscal year 2007-2008 to be
 13 paid into the Hawaii state pharmacy assistance program special
 14 fund.

15 There is appropriated out of the Hawaii state pharmacy
 16 assistance program special fund the sum of \$ or so
 17 much thereof as may be necessary for fiscal year 2007-2008 to
 18 the department of human services for the purposes of conducting
 19 the study mandated in section 10 of this Act.

20 The sum appropriated by this Act shall be expended by the
 21 department of human services for the purposes of conducting the
 22 study mandated in section 10 of this Act.



1 SECTION 12. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 13. This Act shall take effect on January 1, 2008;
4 provided that sections 10 and 11 shall take effect on July 1,
5 2007.



Report Title:

State Pharmacy Assistance Program

Description:

Creates a Hawaii State Pharmacy Assistance program by merging the current State Pharmacy Assistance program which coordinates the Medicare Part D prescription drug benefit and the Hawaii Rx plus program under a single comprehensive Hawaii State Pharmacy Assistance program umbrella. Requires the Department of Human Services to take all steps necessary to enable participation in joint prescription drug purchasing agreements with any other health benefits plan or organization within or outside of this state that agrees to participate in a joint purchasing agreement. (SD2)

