

## ACT 76

H.B. NO. 2834

A Bill for an Act Relating to Prescription Drugs.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 346, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follow:

**“PART . HAWAII Rx PROGRAM**

**§346-A Definitions.** As used in this part:

“Administrator” means the director of human services.

“Department” means the department of human services.

“Manufacturer” means anyone who is engaged in manufacturing, preparing, propagating, compounding, processing, packaging, repackaging, or labeling a prescription drug.

“Program” means the Hawaii Rx program except as otherwise provided.

“Discount” means the amount by which the price of a drug sold by a pharmacy is reduced as determined by the department of human services.

**§346-B Hawaii Rx program.** There is established within the department, the Hawaii Rx program. The program will combine the purchasing power of all persons to reduce prescription drug costs for those in the group. The department may contract with a third party or third parties in accordance with chapter 103F to administer any single component, or combination of components of the program including outreach, eligibility, claims, administration, rebate recovery, and redistribution.

**§346-C Program eligibility.** (a) All residents of the State shall be eligible to participate in the Hawaii Rx program.

(b) The department:

- (1) Shall establish procedures for determining eligibility and shall issue program enrollment cards to eligible residents;
- (2) Shall undertake outreach efforts to build public awareness of the program and maximize the enrollment of eligible residents; and
- (3) May adjust the requirements and terms of the program by rule to accommodate any federally funded prescription drug program.

**§346-D Rebate agreement.** (a) Any prescription drug manufacturer that sells prescription drugs in the State may enter into a rebate agreement with the department for the Hawaii Rx access program. The rebate agreement shall require the manufacturer to make rebate payments to the State each calendar quarter or according to a schedule established by the department.

(b) The administrator shall negotiate the amount of the rebate required from a manufacturer.

**§346-E Nonparticipating manufacturers.** If the department and a drug manufacturer fail to reach agreement on the terms of a rebate, the department shall conduct a review of whether to place that manufacturer’s products on the prior

authorization list or formularies for the state medicaid program in accordance with this chapter. The department may release the names of manufacturers that do not enter into rebate agreements. This information shall be deemed public information. The department may also provide to doctors, pharmacists, and other health professionals information about the relative cost of drugs produced by manufacturers that enter into rebate agreements compared to the cost of drugs produced by those that do not enter into rebate agreements. The department shall adopt rules under chapter 91 creating procedures for the implementation of this section.

**§346-F Discounted retail prices for program participants.** (a) Each pharmacy participating in the Hawaii Rx program shall discount the price of drugs covered by the program and sold to program participants.

(b) The department shall establish discounts for drugs covered by a rebate agreement and shall promote the use of reduced-cost drugs, taking into consideration:

- (1) Reduced prices for state and federally capped drug programs;
- (2) Dispensing fees;
- (3) Administrative costs of the department; and
- (4) The average of all rebates provided pursuant to section 346-D, weighted by sales of drugs subject to those rebates over the most recent twelve-month period for which the information is available.

(c) In making a determination under this section, the administrator may rely on pricing information for a selected number of prescription drugs where the list of drugs selected is:

- (1) Representative of the prescription drug needs of the residents of the State; and
- (2) Made public.

(d) Beginning July 1, 2004, a participating pharmacy shall offer prescription drugs below the average wholesale price, plus a dispensing fee designated by the department. These initial price levels shall be calculated by the department and the dispensing fee shall not be less than that provided under the state medicaid program. The average wholesale price is the price on a specific commodity that is assigned by the drug manufacturer and is listed in a nationally-recognized drug pricing file.

(e) No later than January 1, 2005, a participating pharmacy shall offer prescription drugs at or below the initial price levels specified in subsection (d), minus the amount of any discounts as calculated pursuant to subsections (b) and (c) to be paid by the State to the pharmacy.

**§346-G Pharmacy reimbursement.** (a) A pharmacy shall submit claims to the department to verify the amount charged to program participants. On a schedule to be determined by the department, the department shall reimburse each pharmacy for the discounts of prescription drugs provided to program participants.

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

**§346-H Hawaii Rx special fund.** (a) There is established within the state treasury, to be administered by the department, the Hawaii Rx special fund into which shall be deposited:

- (1) All moneys received from manufacturers who pay rebates as provided in section 346-D;
- (2) Appropriations made by the legislature to the fund; and
- (3) Any other revenues designated for the fund.

(b) Moneys in the Hawaii Rx special fund shall be used for the following purposes:

- (1) Reimbursement payments to pharmacies for discounts provided to program participants;
- (2) The cost of administering the Hawaii Rx program, including salary and benefits of employees, computer costs; and
- (3) Any other purpose deemed necessary by the department for the purpose of operating and administering the Hawaii Rx program.

All interest on special fund balances shall accrue to the special fund. Upon dissolution of the Hawaii Rx special fund, any unencumbered moneys in the fund shall lapse to the general fund.

**§346-J<sup>1</sup> Annual report.** The department shall report the enrollment and financial status of the Hawaii Rx program to the legislature no later than twenty days prior to the convening of each regular session, beginning with the 2005 regular session.”

SECTION 2. The administrator of the Hawaii Rx program shall use the administrator’s best efforts to obtain an initial rebate amount equal to or greater than the rebate calculated under the medicaid program pursuant to title 42 United States Code section 1396r-8.

SECTION 3. In implementing this Act, the department of human services shall coordinate with other governmental programs and may take actions to enhance efficiency, reduce the cost of prescription drugs, and maximize the benefits of this and other governmental programs, including proposals to amend eligibility for the Hawaii Rx program to provide program benefits to the beneficiaries of other programs.

The department may seek waivers of federal law, rule, or regulation necessary to implement the provisions of this Act.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$200,000 or so much thereof as may be necessary for fiscal year 2002-2003, to develop a plan to implement the Hawaii Rx program. The plan shall include a description of how the program will operate, how the medicaid prescription drug expansion program will be integrated into the Hawaii Rx program or describe another appropriate design consistent with the goals of the Hawaii Rx program, recommend amendments to the enabling legislation, estimated funding required for start up and operational costs, and any other matters that effect the implementation of the program. The department shall report back to the Legislature regarding the plan no later than twenty days prior to the start of the regular session of 2004. The appropriation may be used to hire consultants to assist in the preparation of the Hawaii Rx program plan.

The sum appropriated shall be expended by the department of human services for the purposes of this Act.

SECTION 5. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 6. In codifying the new sections added by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

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**SECTION 7.** This Act shall take effect on July 1, 2002.

(Approved May 31, 2002.)

**Note**

1. Should be “§346-F”.