

**ACT 209**

S.B. NO. 802

A Bill for an Act Relating to a State Pharmacy Assistance Program.

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

**SECTION 1.** The purpose of this Act is to create a state pharmacy assistance program within the department of human services that meets the requirements of Title 42 United States Code Section 1396r-8, to provide certain pharmaceutical benefits to certain elderly and disabled individuals, and to facilitate the enrollment and coordination of benefits between the state pharmacy assistance program and the new medicare part D drug benefit program provided by the federal Medicare Modernization Act.

This state pharmacy assistance program will assist eligible elderly and disabled individuals in defraying their cost of medically necessary prescriptions under the new medicare part D drug benefit program.

The department shall allow any willing prescription drug plan approved and certified by the federal centers for medicare and medicaid services to provide the coordination of benefits between the State's medicare prescription drug program and the medicare part D drug benefit. To further ensure that eligible seniors and disabled individuals receive a coordinated benefit, the department or its designee may

provide enrollment assistance to eligible individuals into preferred prescription drug plans.

SECTION 2. Chapter 346, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**“PART . STATE PHARMACY ASSISTANCE PROGRAM**

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

“Asset test” means the asset limits for eligibility in the state pharmacy assistance program as defined by the Medicare Modernization Act and any amendments thereto.

“Contractor” means the person, partnership, or corporate entity that has an approved contract with the department to administer the state pharmacy assistance program as established under this part.

“Department” means the department of human services.

“Enrollee” means a resident of this state who meets the conditions specified in this part and in department rules relating to eligibility for participation in the state pharmacy assistance program and whose application for enrollment in the state pharmacy assistance program has been approved by the department.

“Federal poverty level” means the federal poverty level updated annually in the federal register by the United States Department of Health and Human Services under the authority of Title 42 United States Code Section 9902(2).

“Full coverage prescription drug benefit” means a federally approved prescription drug plan that offers a zero co-payment benefit for medicaid dual eligibles under the medicare part D drug benefit.

“Liquid assets” means assets used in the eligibility determination process as defined by the Medicare Modernization Act.

“Medicaid dual eligible” means a person who is eligible for both medicaid and medicare as defined by the Medicare Modernization Act.

“Medicare Modernization Act” means the federal Medicare Prescription Drug, Improvement and Modernization Act of 2003.

“Medicare part D prescription drug benefit” means the federal prescription benefit provided under the Medicare Modernization Act.

“Prescription drug plan” means a plan provided by non-governmental entities under contract with the federal Centers for Medicare and Medicaid Services to provide prescription benefits under the Medicare Modernization Act.

“Resident” means a person who lives within this state and has a fixed place of residence in this state, with the present intent of maintaining a permanent home in this state for the indefinite future.

**§346-B State pharmacy assistance program.** (a) There is established within the department the state pharmacy assistance program. Provided that there are no federally approved prescription drug plans available in the state that provide a full coverage prescription drug benefit, the state pharmacy assistance program may coordinate the prescription drug coverage with the federal medicare part D prescription drug benefit, including related supplies, as determined by the department, to each resident who meets the eligibility requirements as outlined in section 346-C.

(b) The department may provide enrollment assistance to eligible individuals into the state pharmacy assistance program. Enrollment for medicaid dual eligible persons shall begin no later than October 1, 2005.

(c) The department shall allow any willing prescription drug plan approved by the federal Centers for Medicare and Medicaid Services to provide the coordina-

tion of benefits between the State's medicare prescription drug program and the medicare part D drug benefit.

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

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

(f) Any contract with third parties to administer any component of the state pharmacy assistance program shall prohibit the contractor from receiving any compensation or other benefits from any pharmaceutical manufacturer participating in the state pharmacy assistance program.

(g) A prescription drug manufacturer or labeler that sells prescription drugs in the state may enter into a rebate agreement with the department. The rebate agreement may be agreed upon by the manufacturer or the labeler to make rebate payments to the department each calendar quarter or according to a schedule established by the department.

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

(i) The department or contractor may take into consideration the rebate calculated under the medicaid rebate program pursuant to Title 42 United States Code Section 1396r-8, the average wholesale price of prescription drugs, and any other cost data related to prescription drug prices and price discounts.

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

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

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

**§346-C Eligibility.** (a) All residents of the state shall be eligible to participate in the state pharmacy assistance program; provided that the applicant:

- (1) Is a resident of Hawaii;
- (2) Is sixty-five years or older, or is disabled and receiving a social security benefit;
- (3) Has a household income at or below one hundred per cent of the federal poverty level;
- (4) Meets the asset test; and
- (5) Is not a member of a retirement plan who is receiving a benefit from the Medicare Modernization Act.

(b) State pharmacy assistance program applicants who are enrolled in any other public assistance program providing pharmaceutical benefits, other than the Medicare Modernization Act, shall be ineligible for the state pharmacy assistance program as long as they receive pharmaceutical benefits from that other public assistance program, unless the applicant is eligible for medicare. Residents who qualify for, or are enrolled in, the Hawaii RX plus program shall be eligible for the state pharmacy assistance program; provided that they meet all other state pharmacy assistance program requirements.

(c) State pharmacy assistance program applicants who are enrolled in a private sector plan or insurance providing payments for prescription drugs shall be ineligible to receive benefits from the state pharmacy assistance program.

**§346-D Benefits.** (a) For persons meeting the eligibility requirements in section 346-C, the state pharmacy assistance program may pay all or some of the co-payments required under the federal medicare part D pharmacy benefit program, subject to receipt of sufficient rebates pursuant to section 346-B(g), as determined by the department.

(b) The state pharmacy assistance program is the payor of last resort, subject to receipt of sufficient rebates pursuant to section 346-B(g), as determined by the department.

(c) The state pharmacy assistance program shall be funded with state appropriations derived from revenues to the State from rebates paid by pharmaceutical manufacturers pursuant to section 346-B(g), which may affect the level of benefits to program enrollees pursuant to subsection (a) depending on the amount of the rebates received by the State to cover all program benefits and costs of administering the program.

**§346-E Special fund.** (a) There is established within the state treasury to be administered by the department, the state pharmacy assistance program special fund, into which shall be deposited:

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

(b) Moneys in the state pharmacy assistance program special fund may be used for:

- (1) Reimbursement payments to participating pharmacies for co-payments required under the federal medicare part D pharmacy benefit program as provided to state pharmacy assistance program participants;
- (2) The costs of administering the state pharmacy assistance program, including salary and benefits of employees, computer costs, and contracted services as provided in section 346-B(d); and
- (3) Any other purpose deemed necessary by the department for the purpose of operating and administering the state pharmacy program.

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

(c) The department shall expend all revenues received from rebates paid by pharmaceutical manufacturers pursuant to section 346-B(g) to pay for the benefits to enrollees in the state pharmacy assistance program, the costs of administering the program, and reimbursement of medicaid pharmaceutical costs.

**§346-F Administrative rules.** The department shall adopt rules pursuant to chapter 91 necessary for the purposes of this part.

**§346-G Annual reports.** The department shall report the enrollment and financial status of the state pharmacy assistance program to the legislature no later than twenty days prior to the convening of each regular session, beginning with the 2006 regular session.”

SECTION 3. There is appropriated out of the state pharmacy assistance program special fund the sum of \$2,750,000, or so much thereof as may be necessary

## **ACT 209**

for fiscal year 2005-2006, and the same sum, or so much thereof as may be necessary for fiscal year 2006-2007, to carry out the purposes of this Act.

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

**SECTION 4.** In codifying the new sections added to chapter 346, Hawaii Revised Statutes, by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

**SECTION 5.** This Act shall take effect on July 1, 2005.

(Approved July 8, 2005.)