

HOUSE BILL 233
By Turner (Dav)

AN ACT to amend Tennessee Code Annotated, Title 56; Title 63
and Title 71, relative to prescription drugs.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act may be cited as the "Senior Citizen Prescription Drug Discount Program Act."

SECTION 2. The general assembly finds that:

(1) Although senior citizens represent twelve percent (12%) of the population, they use on average thirty-seven percent (37%) of prescription drugs that are dispensed.

(2) Senior citizens in the United States without prescription drug insurance coverage pay the highest prices in the world for needed medications.

(3) High prescription drug prices force many Tennessee seniors to go without proper medication or other necessities, thereby affecting their health and safety.

(4) Prescription drug prices in the United States are the world's highest, averaging thirty-two percent (32%) higher than in Canada, forty percent (40%) higher than in Mexico, and sixty percent (60%) higher than in Great Britain.

(5) Prescription drug prices listed on the federal supply schedule that serve the veterans' administration, the department of defense, and the coast guard average fifty-two percent (52%) below the non-federal average manufacturer's price.

(6) Regardless of household income, seniors without prescription drug coverage are often just one serious illness away from poverty.

(7) Reducing the price of prescription drugs would benefit the health and well-being of all Tennessee senior citizens by providing more affordable access to needed drugs.

(8) Drug prices on the federal supply schedule are negotiated by the department of veterans' affairs and are the best publicly available indicator of the prices that drug companies charge their favored customers.

SECTION 3. The purpose of this program is to require the department of commerce and insurance to establish and administer a program that will enable eligible senior citizens to purchase prescription drugs at discounted prices.

SECTION 4. As used in this act:

(1) "Authorized pharmacy" means any pharmacy registered in this state under Tennessee Code Annotated, Title 63, and approved by the department.

(2) "AWP" or "Average wholesale price" means the amount determined from the latest publication of the Blue Book, a universally subscribed pharmacist reference guide annually published by the Hearst Corporation. "AWP" or "Average wholesale price" may also be derived electronically from the drug pricing database synonymous with the latest publication of the Blue Book and furnished in the National Drug Data File (NDDF) by First Data Bank (FDB), a service of the Hearst Corporation.

(3) "Commissioner" means the commissioner of commerce and insurance.

(4) "Department" means the department of commerce and insurance.

(5) "Drug manufacturer" means any entity located within or outside Tennessee that is engaged in (i) the production, preparation, propagation, compounding, conversion, or processing of prescription drug products covered under the program, either directly or indirectly by extraction from substances of natural origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis or (ii) the packaging, repackaging, leveling, labeling, or distribution of prescription drug products covered under the program. "Drug manufacturer," however, does not include a wholesale distributor of drugs or a retail pharmacy licensed under Tennessee law.

(6) "Eligible senior" means a person who is (i) a resident of Tennessee and (ii) 65 years of age or older.

(7) "Federal Supply Schedule" or "FSS" means a price catalogue containing goods available for purchase by federal agencies. Drug prices on the FSS are negotiated by the (U.S.) department of veterans' affairs and are the best publicly available indicator of prices drug companies charge favored customers.

(8) "Prescription drug" means any prescribed drug that may be legally dispensed by an authorized pharmacy.

(9) "Program" means the senior citizen prescription drug discount program created under this act.

(10) "Rules" includes rules promulgated and forms prescribed by the department.

SECTION 5. The senior citizen prescription drug discount program is established to protect the health and safety of senior citizens. The program shall be administered by the department. The department shall (i) enroll eligible seniors into the program to qualify them for a discount on the purchase of prescription drugs at an authorized pharmacy, (ii) enter into

rebate agreements with drug manufacturers, and (iii) reimburse pharmacies for the cost of providing discounts using the proceeds from the manufacturer rebate agreements.

SECTION 6.

(a) Beginning on January 1, 2002, the amount paid by eligible seniors enrolled in the program to authorized pharmacies for prescription drugs may not exceed prices listed on the federal supply schedule plus a dispensing fee calculated as provided by rule promulgated by the commissioner, but which shall initially be set at three dollars (\$3.00) per prescription. Nothing in this act precludes any authorized pharmacy from charging less than the listed price on the federal supply schedule. The department must provide the applicable federal supply schedule to authorized pharmacies. For prescription drugs that are not listed on the federal supply schedule, the amount paid by eligible seniors enrolled in the program to authorized pharmacies may not exceed the AWP minus thirty-five percent (35%) plus a dispensing fee calculated as provided by rule promulgated by the commissioner, but which shall initially be set at three dollars (\$3.00) per prescription.

(b) Subject to the requirements of Tennessee Code Annotated, Title 12, Chapter 4, Part 7, the department shall compensate authorized pharmacies from the senior citizen prescription drug discount program fund for the difference between the amount paid by eligible seniors for prescription drugs dispensed under the program and the AWP minus ten percent (10%).

SECTION 7.

(a) Each drug manufacturer that distributes a prescription drug for sale in Tennessee and has an agreement with any payor of prescription drug benefits that results in a reduction in price for prescription drugs sold by an authorized pharmacy shall also enter into a rebate agreement with the department to enable persons eligible for benefits under this program to purchase prescription drugs at a discounted price. The

rebate agreement shall be equal to the cost to the department for reimbursing authorized pharmacies under this act pursuant to subsection (b) of Section 6. The rebate agreement shall become effective the first day of the calendar quarter that begins sixty (60) days after the date the agreement is entered into.

(b) The department shall develop a model rebate agreement for prescription drugs dispensed on and after the effective date of this act.

(c) All rebates negotiated under agreements described in this section shall be paid to the department in accordance with procedures prescribed by the department. All rebates must be remitted to the department not later than thirty (30) days after receipt of a request for payment by the department.

(d) The receipts from the rebates and moneys transferred under Section 8 shall be deposited into the senior citizen prescription drug discount program fund, a special fund hereby created in the state treasury, and shall be used, subject to appropriation, to cover the cost of reimbursing authorized pharmacies under this act pursuant to subsection (b) of Section 6.

SECTION 8.

(a) Within thirty (30) days after the effective date of this act, the state comptroller shall direct and the state treasurer shall transfer such funds as the general appropriations act shall specify from the general fund to the senior citizen prescription drug discount program fund to facilitate the payment of reimbursements to authorized pharmacies.

(b) The senior citizen prescription drug discount program fund, referred to in this section as the "fund," is established to receive revenue from manufacturers and labelers who pay rebates and any appropriations or allocations designated for the fund. The purposes of the fund are to: reimburse retail pharmacies for discounted prices provided to senior citizen prescription drug discount program participants and to reimburse the

department for the costs of administering the program, including contracted services, computer costs, professional fees paid to participating retail pharmacies and other reasonable program costs. Moneys from the fund may be expended to fund activities authorized by this part. Any revenues deposited in this reserve shall remain in the reserve until expended for purposes consistent with this part, and shall not revert to the general fund on any June 30. Any excess revenues on interest earned by such revenues shall not revert on any June 30, but shall remain available for appropriation in subsequent fiscal years. Surplus funds in the fund may be used only for the benefit of the senior citizen prescription drug discount program.

SECTION 9.

(a) Any person may apply to the department for participation in the program in the form and manner required by the department. The department shall determine the eligibility of each applicant for the program within thirty (30) days after the date of application. To participate in the program an eligible senior whose application has been approved by the department must pay twenty-five dollars (\$25) upon enrollment and annually thereafter and shall receive a program identification card. The card may be presented to an authorized pharmacy to assist the pharmacy in verifying eligibility under the program. The department shall deposit the enrollment fees collected into the senior citizen prescription drug discount program fund. The monies collected by the department for enrollment fees and deposited into the senior citizen prescription drug discount program fund must be separately accounted for by the department. If two (2) or more persons are eligible for any benefit under this act and are members of the same household, each participating household member shall apply to the department and pay the fee required for the purpose of obtaining an identification card.

(b) Proceeds from annual enrollment fees, subject to appropriation, shall be used by the department to offset the administrative cost of this act. The department may

reduce the annual enrollment fee by rule if the revenue from the enrollment fees is in excess of the costs to carry out the program.

(c) Any person who is a resident of Tennessee and is at least sixty-five (65) years of age is eligible for this program.

SECTION 10.

(a) The department shall promulgate rules to establish standards and procedures for participation in the program and approve those pharmacies that apply to participate and meet the requirements for participation. The department may remove the authorization of a pharmacy to participate in this program for failure to meet the standards and procedures for participation established by the department by rule. Any pharmacy that has been removed as an authorized pharmacy by the department may apply for reinstatement as an authorized pharmacy in accordance with standards and procedures established by the department by rule.

(b) The department shall annually review the eligibility of pharmacies to participate in the program.

(c) The department shall establish procedures for properly contracting for pharmacy services, validating reimbursement claims, validating compliance of authorized pharmacies with the conditions for participation required under this act, and otherwise providing for the effective administration of this act. The commissioner, in consultation with pharmacists licensed under Tennessee Code Annotated, Title 63, Chapter 10, may enter into a written contract with any other state agency, instrumentality, or political subdivision or with a fiscal intermediary for the purpose of making payments to authorized pharmacies pursuant to subsection (b) of Section 6 and coordinating the program with other programs that provide payments for prescription drugs covered under the program.

SECTION 11. The department shall promulgate rules to implement and administer the program, which shall include the following:

(1) Execution of contracts with pharmacies to participate in the program. The contracts shall stipulate terms and conditions for the participation of authorized pharmacies and the rights of the state to terminate participation for breach of the contract or for violation of this act or rules promulgated by the department under this act.

(2) Establishment of maximum limits on the size of prescriptions that are eligible for a discount under the program, up to a ninety (90)-day supply, except as may be necessary for utilization control reasons.

(3) Establishment of liens upon any and all causes of action that accrue to a beneficiary as a result of injuries for which prescription drugs covered under the program are directly or indirectly required and for which the commissioner made payment or became liable for under this act.

(4) Inspection of appropriate records and audits of participating authorized pharmacies to ensure contract compliance and to determine any fraudulent transactions or practices under this act.

SECTION 12. The department shall report to the governor and the general assembly by March 1st of each year on the administration of the program under this act.

SECTION 13. The commissioner is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 14. The provisions of this act shall not be construed to be an appropriation of funds and no funds shall be obligated or expended pursuant to this act unless such funds are specifically appropriated by the general appropriations act.

SECTION 15. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the

act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 16. This act shall take effect July 1, 2001, the public welfare requiring it.