

SENATE BILL 550

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2002 Regular Session
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By: **Senators Van Hollen, Bromwell, Exum, Frosh, Middleton, and Teitelbaum**

Introduced and read first time: February 1, 2002
Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Fair Market Drug Pricing Act**

3 FOR the purpose of including uninsured individuals in the Maryland Pharmacy
4 Discount Program; altering the source of certain subsidized prescription drug
5 rebates; authorizing certain pharmacies to increase the processing fee for
6 prescriptions filled under the Program; authorizing the Department of Health
7 and Mental Hygiene to negotiate discount prices or rebates for prescription
8 drugs for certain State programs; requiring the Department when negotiating
9 rebate terms to consider certain information on prescription drug prices,
10 discounts, and rebates; requiring the Department to review whether to place a
11 manufacturer's products on a prior authorization list, or any other State-funded
12 formulary or approved drug list, if certain terms or rebates are not favorable to
13 the State; requiring the Department to consider the clinical efficacy of a drug
14 when reviewing whether to place a product on a prior authorization list;
15 requiring that a prior authorization program provide a response from an
16 authorized prescriber within a certain number of hours of a request for
17 authorization, and to provide a certain supply of a drug in certain situations;
18 requiring the Department to establish a certain appeals process; requiring the
19 Department to release the names of manufacturers that do not enter into rebate
20 agreements; defining certain terms; requiring the Secretary to adopt certain
21 regulations; requiring the Department to make a certain report on or before a
22 certain date; and generally relating to prescription drug discounts and rebates.

23 BY repealing and reenacting, with amendments,
24 Article - Health - General
25 Section 15-124.1
26 Annotated Code of Maryland
27 (2000 Replacement Volume and 2001 Supplement)
28 (As enacted by Section 1 of Chapters 134 and 135 of the Acts of the General
29 Assembly of 2001)

30 BY repealing
31 Article - Health - General

1 Section 15-124.1
2 Annotated Code of Maryland
3 (2000 Replacement Volume and 2001 Supplement)
4 (As enacted by Section 2 of Chapters 134 and 135 of the Acts of the General
5 Assembly of 2001)

6 BY adding to
7 Article - Health - General
8 Section 15-124.3
9 Annotated Code of Maryland
10 (2000 Replacement Volume and 2001 Supplement)

11 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
12 MARYLAND, That the Laws of Maryland read as follows:

13 **Article - Health - General**

14 15-124.1.

15 (a) [(1)] In this section the following words have the meanings indicated:

16 [(2)] (1) "Enrollee" means an individual who is enrolled in the Maryland
17 Pharmacy Discount Program.

18 [(3)] (2) "Program" means the Maryland Pharmacy Discount Program
19 established under this section.

20 (b) There is a Maryland Pharmacy Discount Program [within the Maryland
21 Medical Assistance Program].

22 (c) The purpose of the Program is to improve the health status of Medicare
23 beneficiaries AND INDIVIDUALS who lack prescription drug coverage by providing
24 access to lower cost, medically necessary, prescription drugs.

25 (d) The Program shall be administered and operated by the Department OR
26 ITS DESIGNEE as permitted by federal law or waiver.

27 (e) (1) The Program shall be open to Medicare beneficiaries AND OTHER
28 INDIVIDUALS who lack other public or private prescription drug coverage:

29 (I) WHO ARE MEDICARE BENEFICIARIES; OR

30 (II) WHOSE ANNUAL HOUSEHOLD INCOME IS AT OR BELOW 300
31 PERCENT OF THE FEDERAL POVERTY GUIDELINES.

32 (2) Notwithstanding paragraph (1) of this subsection, enrollment in the
33 Maryland Medbank Program established under § 15-124.2 of this subtitle or the
34 Maryland Pharmacy Assistance Program established under § 15-124 of this subtitle
35 does not disqualify an individual from being eligible for the Program.

1 (f) (1) Subject to subsection (g) of this section, an enrollee may purchase
2 medically necessary prescription drugs that are covered under the Maryland Medical
3 Assistance Program from any pharmacy that participates in the Maryland Medical
4 Assistance Program at a price that is based on the price paid by the Maryland
5 Medical Assistance Program, minus the aggregate value of any [federally mandated]
6 manufacturers' rebates NEGOTIATED UNDER § 15-124.3 OF THIS STATUTE.

7 (2) Subject to subsection (g) of this section, and to the extent authorized
8 under federal waiver, an enrollee whose annual household income is at or below 175
9 percent of the federal poverty guidelines may receive a discount subsidized by the
10 Department that is equal to THE AGGREGATE VALUE OF ANY FEDERALLY MANDATED
11 MANUFACTURERS' REBATES PLUS [35] 15 percent of the price paid by the Maryland
12 Medical Assistance Program for each medically necessary prescription drug
13 purchased under the Program.

14 (g) The Department may establish mechanisms to:

15 (1) Recover the administrative costs of the Program;

16 (2) Reimburse participating pharmacies in an amount equal to the
17 Maryland Medical Assistance price, minus the copayment paid by the enrollee for
18 each prescription filled under the Program; and

19 (3) Allow participating pharmacies to collect a [\$1] \$2 processing fee, in
20 addition to any authorized dispensing fee, for each prescription filled for an enrollee
21 under the Program.

22 (h) The Secretary shall adopt regulations to implement the Program.

23 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
24 read as follows:

25 **Article - Health - General**

26 15-124.3.

27 (A) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
28 INDICATED.

29 (1) "AUTHORIZED PRESCRIBER" MEANS A LICENSED PHYSICIAN OR
30 CERTIFIED NURSE PRACTITIONER TO THE EXTENT PERMITTED UNDER § 8-508 OF
31 THE HEALTH OCCUPATIONS ARTICLE, OR OTHER INDIVIDUAL AUTHORIZED BY LAW
32 TO PRESCRIBE PRESCRIPTION OR NONPRESCRIPTION DRUGS OR DEVICES.

33 (2) (I) "MANUFACTURER" MEANS A MANUFACTURER OF
34 PRESCRIPTION DRUGS AS DEFINED IN 42 U.S.C. § 1396R-8(K)(5).

35 (II) "MANUFACTURER" INCLUDES A SUBSIDIARY OR AFFILIATE OF
36 A MANUFACTURER.

1 (B) THE DEPARTMENT OR ITS DESIGNEE MAY NEGOTIATE DISCOUNT PRICES,
2 REBATES, OR SUPPLEMENTAL REBATES FROM DRUG MANUFACTURERS FOR
3 PRESCRIPTION DRUGS PURCHASED BY ANY PROGRAM WITHIN THE MARYLAND
4 MEDICAL ASSISTANCE PROGRAM OR FOR ANY OTHER STATE PROGRAMS THAT PAY
5 FOR OR ACQUIRE PRESCRIPTION DRUGS.

6 (C) WHEN NEGOTIATING REBATE TERMS, THE DEPARTMENT SHALL
7 CONSIDER THE FOLLOWING:

8 (1) THE REBATE CALCULATED UNDER THE MEDICAID REBATE
9 PROGRAM UNDER 42 U.S.C. § 1396R-8; AND

10 (2) ANY OTHER AVAILABLE INFORMATION ON PRESCRIPTION DRUG
11 PRICES, DISCOUNTS, AND REBATES.

12 (D) (1) THE DEPARTMENT SHALL REVIEW WHETHER TO PLACE A
13 MANUFACTURER'S PRODUCTS ON A PRIOR AUTHORIZATION LIST FOR THE
14 MARYLAND MEDICAL ASSISTANCE PROGRAM AND TAKE SIMILAR ACTIONS
15 INVOLVING FORMULARIES FOR ANY OTHER STATE PROGRAMS THAT PAY FOR OR
16 ACQUIRE PRESCRIPTION DRUGS, IF THE DEPARTMENT AND A DRUG MANUFACTURER
17 FAIL TO REACH AN AGREEMENT ON THE TERMS OF A REBATE OR DISCOUNT.

18 (2) THE DEPARTMENT SHALL CONSIDER THE CLINICAL EFFICACY OF A
19 DRUG IN REVIEWING WHETHER TO PLACE A MANUFACTURER'S PRODUCTS ON A
20 PRIOR AUTHORIZATION LIST.

21 (3) THE DEPARTMENT SHALL IMPLEMENT PROCEDURES TO ENSURE
22 THAT:

23 (I) THE DEPARTMENT RESPONDS TO A REQUEST FROM AN
24 AUTHORIZED PRESCRIBER BY TELEPHONE OR OTHER TELECOMMUNICATION
25 DEVICE WITHIN 24 HOURS OF A REQUEST FOR PRIOR AUTHORIZATION; AND

26 (II) A 72-HOUR SUPPLY OF A DRUG PRESCRIBED WILL BE PROVIDED
27 IN AN EMERGENCY SITUATION OR WHEN THE DEPARTMENT DOES NOT PROVIDE A
28 RESPONSE WITHIN 24 HOURS.

29 (4) THE DEPARTMENT SHALL ESTABLISH AN APPEALS PROCESS FOR AN
30 AUTHORIZED PRESCRIBER TO:

31 (I) APPEAL THE DEPARTMENT'S PRIOR AUTHORIZATION DECISION
32 TO A LICENSED PHYSICIAN WITH A SPECIALITY IN PHARMACOLOGY; AND

33 (II) RECEIVE A RESPONSE WITHIN 24 HOURS.

34 (E) THE DEPARTMENT SHALL RELEASE THE NAMES OF MANUFACTURERS
35 THAT DO NOT ENTER INTO A REBATE AGREEMENT AND DISTRIBUTE THIS
36 INFORMATION TO DOCTORS, PHARMACISTS, AND OTHER HEALTH CARE
37 PROFESSIONALS.

1 (F) THE SECRETARY SHALL ADOPT REGULATIONS TO CARRY OUT THE
2 PROVISIONS OF THIS SECTION.

3 SECTION 3. AND BE IT FURTHER ENACTED, That the Department of
4 Health and Mental Hygiene shall report to the General Assembly on or before
5 January 1, 2004, in accordance with § 2-1246 of the State Government Article, on the
6 amount of supplemental rebates negotiated under this Act and the effect on
7 prescription drug expenditures in the Program.

8 SECTION 4. AND BE IT FURTHER ENACTED, That Section 1 of this Act is
9 contingent on the taking effect of Section 1 of Chapters 134 and 135 of the Acts of the
10 General Assembly of 2001. If Section 1 of Chapters 134 and 135 becomes effective,
11 Section 2 of this Act shall be null and void without the necessity of further action by
12 the General Assembly.

13 SECTION 5. AND BE IT FURTHER ENACTED, That § 15-124.1 of the Health
14 - General Article of the Annotated Code of Maryland as enacted by Section 2 of
15 Chapters 134 and 135 of the Acts of the General Assembly of 2001 be repealed.

16 SECTION 6. AND BE IT FURTHER ENACTED, That, subject to the provisions
17 of Sections 4 and 5 of this Act, this Act shall take effect October 1, 2002.