

FIRST REGULAR SESSION

SENATE BILL NO. 39

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR BRAY.

Pre-filed December 1, 2004, and ordered printed.

TERRY L. SPIELER, Secretary.

0227S.011

AN ACT

To repeal sections 208.556, 208.559, 208.568, and 208.574, RSMo, and to enact in lieu thereof nine new sections relating to the coordination of benefits for the Medicare Prescription Drug, Improvement and Modernization Act of 2003, with a termination date for a certain section.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 208.556, 208.559, 208.568, and 208.574, RSMo, are repealed and nine new sections enacted in lieu thereof, to be known as sections 208.556, 208.559, 208.568, 208.574, 208.575, 208.577, 208.579, 208.581, and 208.583, to read as follows:

208.556. 1. There is hereby established the "Missouri Senior Rx Program" within the division of aging in the department of health and senior services to help defray the costs of prescription drugs for elderly Missouri residents. The division shall provide technical assistance to the commission for the administration and implementation of the program. The commission shall solicit requests for proposals from private contractors for the third-party administration of the program; except that, the commission shall either administer the rebate program established in section 208.565 or contract with the division of medical services for such rebate program. The program shall be governed by the commission for the Missouri Senior Rx program established in section 208.553.

2. Administration of the program shall include, but not be limited to, devising program applications, enrolling participants, administration of prescription drug benefits, and implementation of cost-control measures, including such strategies as disease management programs, early refill edits, drug utilization review which includes retroactive approval systems, fraud and abuse detection system, and auditing programs. The commission shall select a responsive, cost-effective bid from the requests for proposal; however, if no responsive, cost-effective bids are received, the program shall be administered collaboratively

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

by the department of health and senior services and the department of social services.

3. Prescription drug benefits shall not include coverage of the following drugs or classes of drugs, or their medical uses:

- (1) Agents when used for anorexia or weight gain;
- (2) Agents when used to promote fertility;
- (3) Agents when used for cosmetic purposes or hair growth;
- (4) Agents when used for the symptomatic relief of cough and colds;
- (5) Agents when used to promote smoking cessation;
- (6) Prescription vitamins and mineral products, except prenatal vitamins and fluoride preparations;

(7) Nonprescription drugs;

(8) Covered outpatient drugs which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee;

(9) Barbiturates;

(10) Benzodiazepines.

4. Subject to appropriations, available funds and other cost-control measures authorized herein, any Missouri resident sixty-five years of age or older, who has not had access to employer-subsidized health care insurance that offers a pharmacy benefit for six months prior to application, who is not currently ineligible pursuant to subsection 8 of this section:

(1) Who has a household income at or below twelve thousand dollars for an individual or at or below seventeen thousand dollars for a married couple is eligible to participate in the program; or

(2) Who has a household income at or below seventeen thousand dollars for an individual or at or below twenty-three thousand dollars for a married couple is eligible to participate in the program.

(3) However, the commission may restrict income eligibility limits as a last resort to obtain program cost control.

5. The commission shall have the authority to set and adjust coinsurance, deductibles and enrollment fees at different amounts pursuant to subdivisions (1) and (2) of subsection 4 of this section as a cost-containment measure.

6. Any person who has retired and received employer-sponsored health insurance while employed, but whose employer does not offer health insurance coverage to retirees shall not be subject to the six-month uninsured requirement.

7. The program established in this section is not an entitlement. Benefits shall be limited to the level supported by the moneys explicitly appropriated pursuant to this section. If in any fiscal year the commission projects that the total cost of the program will exceed the

amount currently appropriated for the program, the commission may direct the third-party administrator to implement cost-control measures to reduce the projected cost. Such cost-control measures may include, but are not limited to, increasing the enrollment fees in subsection 12 of this section, the deductibles in subsection 11 of this section, and the coinsurance outlined in subsection 12 of this section. The Missouri Senior Rx program is a payer of last resort. If the federal government establishes a pharmaceutical assistance program that covers program-eligible seniors under Medicare or another program, the Missouri Senior Rx program shall cover only eligible costs not covered by the federal program.

8. Any person who is receiving Medicaid benefits shall not be eligible to participate in the program. The Missouri Senior Rx program is a payer of last resort. If a senior has coverage for pharmaceutical benefits through a health benefit plan, as defined in section 376.1350, RSMo, including a Medicare supplement or Medicare+Choice plan, or through a self-funded employee benefit plan, the Missouri Senior Rx program shall pay only for eligible costs not provided by such coverage. Individuals who have benefits with an actuarial value greater than or equal to the benefits in the program are not eligible for the program.

9. All applicants [for] **not currently participating** in the program shall submit an [annual] **initial** application to the division, or the division's designee, that attests to the age, residence, any third-party health insurance coverage, previous year prescription drug costs, annual household income for an individual or couple, if married, and any other information the commission deems necessary. The third-party administrator shall prescribe the form of the application for **initial** enrollment in the program, which shall be approved by the division. The commission shall develop and implement a means test by which applicants must demonstrate that they meet the income requirement of the program. Information provided by applicants and enrollees pursuant to sections 208.550 to 208.571 is confidential and shall not be disclosed by the commission, the division or any other state agency or contractor therein in any form.

10. Nothing in this section shall be construed as requiring an applicant to accept Medicaid benefits in lieu of participation in this program.

11. The following deductibles shall apply to enrollees in the program:

(1) For an individual with a household income at or below twelve thousand dollars, the deductible shall, in the initial year, not be less than two hundred fifty dollars;

(2) For a married couple with a household income at or below seventeen thousand dollars, the deductible shall, in the initial year, not be less than two hundred fifty dollars for each person;

(3) For an individual with a household income between twelve thousand one dollars and seventeen thousand dollars, the deductible shall, in the initial year, not be less than five hundred dollars; and

(4) For a married couple with a household income between seventeen thousand one dollars and twenty-three thousand dollars, the deductible shall, in the initial year, not be less than five hundred dollars for each person.

12. For prescription drugs, enrollees shall pay a forty percent coinsurance. The division may implement a higher coinsurance at the recommendation of the commission. Such coinsurance may be adjusted annually by the commission and shall be used to reduce the state's cost for the program. In addition, each enrollee with an annual household income at or below twelve thousand dollars for an individual or at or below seventeen thousand dollars for a married couple shall pay, in the initial year, not less than an annual twenty-five dollar enrollment fee and each enrollee with a household income between twelve thousand one dollars and seventeen thousand dollars for an individual or at or below between seventeen thousand one dollars and twenty-three thousand dollars for a married couple shall pay, in the initial year, not less than an annual thirty-five dollar enrollment fee to offset the administrative costs of the program.

13. The total annual expenditures for each enrollee under this program may be up to but shall not exceed five thousand dollars for each participant.

14. In providing program benefits, the department may enter into a contract with a private individual, corporation or agency to implement the program.

15. The division shall utilize area agencies on aging, senior citizens centers, and other senior-focused entities to provide outreach, enrollment referral assistance, and education services to potentially eligible seniors for the Missouri Senior Rx program. The division and third-party administrators shall be responsible for informing eligible seniors on the availability of and providing information about pharmaceutical company benefits which may be applicable.

16. The commission shall submit quarterly reports to the governor, the senate appropriations committee, the house of representatives budget committee, the speaker of the house of representatives, the president pro tem of the senate, and the division that include:

- (1) Quantified data as to the number of program applicants;
- (2) An estimate of whether the current rate of expenditures will exceed the existing appropriation for the program in the current fiscal year; and

- (3) Information regarding the commission's recommendations for changes to income eligibility, enrollment fees, coinsurance, deductibles, and benefit caps for enrollees in the program.

17. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in sections 208.550 to 208.571 shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. Sections 208.550 to 208.571 and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant

to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2002, shall be invalid and void.

18. Any person who knowingly makes any false statements, falsifies or permits to be falsified any records, or engages in conduct in an attempt to defraud the program is guilty of a misdemeanor and shall forfeit all rights to which he or she may be entitled hereunder.

208.559. 1. [[The Missouri Senior Rx program shall be operational no later than July 1, 2002.] The division shall accept applications for **initial** enrollment during an [initial] open enrollment period from [April 1, 2002, through May 30, 2002. Beginning with the enrollment period for fiscal year 2004, open enrollment periods for the program shall be held from] January first through February twenty-eighth **of each year. Any current enrollee shall automatically remain in the program unless such enrollee specifically opts out of the program during an open enrollment period. The division may establish procedures for verifying a current enrollee's continued eligibility for the program under section 208.556.**

2. A person may apply for participation in the program outside the enrollment periods listed in subsection 1 of this section within thirty days of such person attaining the age and income eligibility requirements of the program established in section 208.556.

208.568. 1. There is hereby created in the state treasury the "Missouri Senior Rx Fund", which shall consist of all moneys deposited in the fund pursuant to sections 208.550 to 208.571 and all moneys which may be appropriated to it by the general assembly, from federal or other sources.

2. The state treasurer shall administer the fund and credit all interest to the fund and the moneys in the fund shall be used solely by the commission for the Missouri Senior Rx program and the division of aging for the implementation of the program for seniors established in sections 208.550 to 208.571.

3. Notwithstanding the provisions of section 33.080, RSMo, to the contrary, moneys in the fund shall [not] revert to the credit of the [general revenue fund at the end of the biennium] **Missouri senior prescription drug plan fund created pursuant to section 208.586, following notice to the revisor of statutes by the Missouri senior prescription drug plan commission that the Medicare Prescription Drug, Improvement and Modernization Act of 2003 has been fully implemented.**

208.574. The provisions of sections 208.550 to 208.571 shall [be reauthorized every four years] **terminate following notice to the revisor of statutes by the Missouri senior prescription drug plan commission that the Medicare Prescription Drug, Improvement and Modernization Act of 2003 has been fully implemented.**

208.575. 1. **For the purposes of sections 208.575 to 208.583, the following terms shall mean:**

(1) "Eligible senior", any Missouri resident who is sixty-five years of age or older, and who is a participant in the Medicare Part D benefit, and whose income is:

(a) Equal to or greater than one hundred fifty percent of the federal poverty level and less than two hundred percent of the federal poverty level; or

(b) Less than one hundred fifty percent of the federal poverty level and the individual does not qualify for Medicare Part D low-income subsidies because the value of the individual's assets exceeds that amount allowed for qualification pursuant to P.L. 108-173.

(2) "Gap coverage", seventy-five percent of qualified prescription drug expenses incurred by an eligible senior each year:

(a) After the eligible senior has incurred qualified prescription drug expenses equal to the initial coverage limit for that year, as "initial coverage limit" is defined in the Medicare Prescription Drug, Improvement and Modernization Act of 2003; and

(b) Before the eligible senior has incurred qualified prescription drug expenses equal to the annual out-of-pocket threshold for that year, as "annual out-of-pocket threshold" is defined in the Medicare Prescription Drug, Improvement and Modernization Act of 2003;

(3) "Qualified prescription drug expenses", those expenses incurred for prescription drugs for which coverage is allowed pursuant to subsections 6, 7, and 8 of this section;

(4) "Prescription drug plan (PDP) sponsors", providers who meet the requirements as prescribed in section 1860D-12 of the Medicare Prescription Drug, Improvement and Modernization Act of 2003, P.L. 108-173.

2. In order to fill the gap created due to the enactment of the Medicare Prescription Drug, Improvement and Modernization Act of 2003, P.L. 108-173, the "Missouri Senior Prescription Drug Plan" is established within the department of health and senior services. The Missouri senior prescription drug plan shall be effective following notice to the revisor of statutes by the Missouri senior prescription drug plan commission that the Medicare Prescription Drug, Improvement and Modernization Act of 2003 has been fully implemented.

3. The Missouri senior prescription drug plan is not an entitlement to replace the Medicare Prescription Drug, Improvement and Modernization Act of 2003. Benefits shall be limited to the level supported by the moneys explicitly appropriated pursuant to this section. If in any fiscal year the commission projects that the total cost of the plan will exceed the amount currently appropriated for the plan, the commission may request a supplemental

appropriation to fund the plan or may direct the prescription drug plan sponsor to implement cost control measures to reduce the projected cost. The Missouri senior prescription drug plan is a payer of last resort.

4. Subject to appropriations and other available funds, the Missouri senior prescription drug plan shall provide gap coverage for each eligible senior each year, except that the total benefit under the Missouri senior prescription drug plan for any eligible senior shall not exceed two thousand one hundred thirty-eight dollars in the first year of the plan with that amount thereafter adjusted annually based upon the provisions of the Medicare Prescription Drug, Improvement and Modernization Act of 2003 in such a manner to maintain the full seventy-five percent coverage for qualified prescription drug expenses incurred within the coverage gap created by the Medicare Prescription Drug Improvement and Modernization Act of 2003.

5. Applications for the Missouri senior prescription drug plan will be conducted jointly with applications for the Medicare Part D benefit. The enrollment period for the state plan shall correspond with the enrollment period for the federal program as prescribed in P.L. 108-173.

6. The Missouri senior prescription drug plan shall include and provide coverage for only the prescription drugs that are covered in the prescription drug plan sponsors' formulary pursuant to the Medicare Prescription Drug, Improvement and Modernization Act, P.L. 108-173.

7. The Missouri senior prescription drug plan shall not include coverage of the following drugs or classes of drugs, or their medical uses:

- (1) Agents when used for anorexia or weight gain;
- (2) Agents when used to promote fertility;
- (3) Agents when used for cosmetic purposes or hair growth;
- (4) Agents when used for the symptomatic relief of cough and colds;
- (5) Prescription vitamins and mineral products, except prenatal vitamins and fluoride preparations;
- (6) Nonprescription drugs;
- (7) Covered outpatient drugs which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee;
- (8) Barbiturates;
- (9) Benzodiazepines.

8. The Missouri senior prescription drug plan shall also exclude prescription drugs which are not "reasonable and necessary" as defined pursuant to Section 1862(a) of P.L. 108-173.

9. For the covered prescription drugs, the state shall not be charged an amount in excess of the price charged pursuant to the federal benefit in P.L. 108-173.

208.577. 1. There is hereby established the "Missouri Senior Prescription Drug Plan Commission" within the department of health and senior services to govern the implementation and administration of section 208.575. The commission shall consist of the following twelve members:

(1) The lieutenant governor, in his or her capacity as advocate for the elderly;

(2) Two members of the senate, with one member from the majority party appointed by the president pro tem of the senate and one member of the minority party appointed by the president pro tem of the senate with the concurrence of the minority floor leader of the senate;

(3) Two members of the house of representatives, with one member from the majority party appointed by the speaker of the house of representatives and one member of the minority party appointed by the speaker of the house of representatives with the concurrence of the minority floor leader of the house of representatives;

(4) The director of the division of medical services in the department of social services;

(5) The director of the department of health and senior services;

(6) A pharmacist appointed by the governor with the advice and consent of the senate;

(7) A physician appointed by the governor with the advice and consent of the senate;

(8) A representative from a senior advocacy group appointed by the governor with the advice and consent of the senate;

(9) A representative from an area agency on aging appointed by the governor with the advice and consent of the senate; and

(10) A representative from the pharmaceutical manufacturers industry as a nonvoting member appointed by the president pro tem of the senate and the speaker of the house of representatives.

2. Members appointed by the governor shall serve for three-year terms. Other members, except legislative members, shall serve for as long as they hold the position which made them eligible for appointment. Legislative members shall serve during their current term of office but may be reappointed.

3. The commission shall elect a chair and may employ administrative staff as necessary to assist in the performance of the commission's duties.

4. The members of the commission shall receive no compensation for their service on the commission, but shall be reimbursed for ordinary and necessary expenses incurred in the performance of their duties as a member of the commission.

5. The commission shall have the authority to:

(1) Contract with prescription drug plan sponsors for the implementation and administration of the Missouri senior prescription drug plan;

(2) Contract with prescription drug plan sponsors for the annual verification of eligibility of applicants for the Missouri senior prescription drug plan;

(3) Adjust the fee payments for prescription drug plan sponsors;

(4) Set and adjust coinsurance at different amounts;

(5) Coordinate with the Missouri Senior Rx commission to avoid any duplication in coverage and to ensure a smooth transition between the senior Rx program and the Missouri senior prescription drug plan; and

(6) Perform any other function necessary for the implementation and administration of the Missouri senior prescription drug plan.

6. The commission also shall apply to the United States Department of Health and Human Services for any applicable federal waivers or public or private grants.

7. The commission shall have rulemaking authority for the implementation and administration of sections 208.575 to 208.583. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2005, shall be invalid and void.

208.579. 1. Subject to appropriations, there is hereby established the "Missouri Senior Prescription Drug Plan Clearinghouse" within the Missouri senior prescription drug plan commission. The commission may submit requests for proposal for the third-party administration of the clearinghouse. The purpose of the clearinghouse shall include, but not be limited to:

(1) Assist all Missouri residents in accessing prescription drug programs;

(2) Educate the public on quality drug programs and cost-containment strategies; and

(3) Serve as a resource for pharmaceutical benefit issues.

2. The administration of the clearinghouse shall include, but not be limited to:

(1) Providing a one-stop-shopping clearinghouse for all information for seniors regarding prescription drug coverage programs and health insurance issues;

(2) Targeting outreach and education including print and media, social service and health care providers to promote the program;

(3) Maintaining a toll-free 800-phone number staffed by trained customer service representatives;

(4) Providing the state with measurable data to identify the progress and success of the plan, including but not limited to, the number of individuals served, length and type of assistance, follow-up and plan evaluation; and

(5) Providing information on eligibility, enrollment, and benefits for the Missouri senior prescription drug plan on the department of health and senior services Internet website.

208.581. 1. There is hereby created in the state treasury the "Missouri Senior Prescription Drug Plan Fund", which shall consist of all moneys deposited in the fund pursuant to sections 208.575 to 208.583 and all moneys which may be appropriated to it by the general assembly, from federal or other sources.

2. The state treasurer shall administer the fund and credit all interest to the fund and the moneys in the fund shall be used solely by the Missouri senior prescription drug plan commission and the department of health and senior services for the implementation of the Missouri senior prescription drug plan established in sections 208.575 to 208.583.

3. Notwithstanding the provisions of section 33.080, RSMo, to the contrary, moneys in the fund shall not revert to the credit of the general revenue fund at the end of the biennium.

208.583. The provisions of sections 208.575 to 208.583 shall be subject to reauthorization every four years.