



SPONSOR: Sen. McBride & Sen. Poore & Sen. Marshall &  
Rep. Heffernan & Rep. Osienski & Rep. Kowalko  
Sens. Bushweller, Ennis, Hansen, Henry, McDowell,  
Sokola, Townsend, Walsh, Lavelle, Richardson, Lopez;  
Reps. Baumbach, Bentz, Brady, Briggs King, Jaques,  
Keeley, Matthews, Paradee, Ramone, K. Williams,  
Bennett

DELAWARE STATE SENATE  
149th GENERAL ASSEMBLY

SENATE BILL NO. 148

AN ACT TO AMEND TITLES 16 AND 29 OF THE DELAWARE CODE RELATING TO THE RESTORATION OF  
THE DELAWARE PRESCRIPTION DRUG PAYMENT ASSISTANCE PROGRAM.

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

Section 1. Amend § Chapter 30B, Title 16 of the Delaware Code by making deletions as shown by strike through  
and insertions shown by underline as follows:

CHAPTER 30B. PRESCRIPTION DRUG PAYMENT ASSISTANCE PROGRAM

§ 3001B Short title.

This chapter shall be known and may be cited as the "Delaware Prescription Drug Payment Assistance Program".

§ 3002B Purpose.

The purpose of this chapter is to provide payment assistance for prescription drugs and certain Medicare Part D  
costs to Delaware's low-income senior and disabled citizens who are ineligible for, or do not have, prescription drug  
benefits or coverage through federal (excluding Medicare Part D coverage), state or private sources.

§ 3003B Definitions.

(a) "Department" shall mean the Department of Health and Social Services.

(b) "Eligible person" shall mean a person eligible for the Delaware Prescription Drug Payment Assistance  
Program pursuant to § 3004B of this title.

(c) "Prescription drugs" shall mean drugs and supplies that have been approved as safe and effective by the  
Federal Food and Drug Administration or are otherwise legally marketed in the United States, including items related to  
diabetes management, if not covered by Medicare, that a physician has deemed medically necessary for the diagnosis  
and/or treatment of the patient. For the purposes of this chapter, prescription drugs may include cost effective over-the-  
counter pharmaceutical products if prescribed by a health care provider authorized to prescribe prescription drugs as an  
alternative to more costly drugs. Prescription drugs covered under this chapter shall be limited and subject to the provisions  
of § 3005B of this title and the rules and regulation adopted pursuant thereto.

(d) The "Program" shall mean the Prescription Drug Payment Assistance Program.

(e) "Secretary" shall mean the Secretary of the Department of Health and Social Services.

(f) "Medicare Part D costs" shall mean monthly premiums, deductibles and those drug costs falling into Part D coverage gap up to the Program benefit limits and subject to program co-pay requirements as described in § 3005B(a)(4) of this title. Medicare Part D costs do not include Medicare Part D co-payments.

§ 3004B Eligibility.

To be eligible for the Program a person must:

(1) Be a U.S. citizen or a lawfully admitted alien;

(2) Have income that is less than 200% of the Federal Poverty Level (FPL) or have prescription drug expenses that exceed 40% of his or her annual income;

(3) Be a resident of the State;

(4) Be ineligible for Medicaid prescription benefits;

(5) Be ineligible for and/or not receiving a prescription drug benefit or any third party payer prescription benefit (excluding Medicare Part D coverage);

(6) Be enrolled in Medicare Part D and Medicare Part D Low Income Subsidy if eligible or qualify for a Medicare Part D Special Enrollment Period as an eligible person under the Delaware Prescription Drug Payment Assistance Program; and

(7) Be an individual aged 65 or over or be an individual between the ages 19 and 64 who is otherwise eligible for benefits under Title II of the Social Security Act (Federal Old Age, Survivors and Disability Insurance Benefits) [42 U.S.C. § 401 et seq.].

§ 3005B Program administration.

(a) The Delaware Prescription Drug Payment Assistance Program shall be administered by the Department. The Department shall promulgate and adopt rules and regulations as are necessary to implement the Program in a cost-effective manner and to ensure the Program is the payer of last resort for prescription drugs. Rules and regulations shall include the following:

(1) Payment assistance shall not exceed \$3,000 in a benefit year to assist each eligible person in the purchase of prescription drugs and the payment of certain Medicare Part D costs.

(2) Medicare Part D coverage will be primary to payment assistance under the program.

(3) The Department shall restrict covered prescription drugs covered under the Program to those manufactured by pharmaceutical companies that agree to provide manufacturer rebates under the drug rebate program established for non-

51 Medicaid programs. The Department shall establish a state rebate program that it determines is in the best interests of the  
52 citizens who are being served. The rebate amount shall be calculated using the full methodology prescribed by the federal  
53 government for the Medicaid program. Notwithstanding any provisions of the Delaware Code to the contrary, the  
54 Department shall deposit any drug rebate funds received into the appropriate Social Services program account and be used  
55 to meet program costs.

56 (4) The Department shall develop a copayment requirement, which shall not exceed 25% of the acquisition cost  
57 but shall be no lower than \$5.00. Copayment amounts may vary when a generic drug is purchased by eligible persons in the  
58 Program. These same copayment amounts shall apply to prescription drug costs not covered by Medicare Part D. The  
59 copayment may be waived in cases of severe hardship.

60 (5) The Secretary or the Secretary's designee shall provide a clear, written explanation defining the scope of the  
61 Program's coverage, the amount of the cost-sharing requirements and any limitations on access to covered prescription  
62 drugs. The Department shall provide notice, when 75% of the cap has been expended. The Department will also notify  
63 persons of the process to appeal a decision denying reimbursement for prescription drugs or denying a person's eligibility  
64 for the Program. Services shall begin on the first day of the month, following the month that eligibility is determined.  
65 Eligible individuals will receive an identification card for the Program.

66 (6) No drug prescription may exceed 100 dosing units or a 34-day supply, whichever is greater.

67 (7) No system of administration shall make direct cash payment to any eligible person.

68 (b) The Department may promulgate and adopt rules and regulations consistent with the following:

69 (1) Limiting application to the Program to a specific open-enrollment period, with coverage effective as of the  
70 date the application is approved.

71 (2) Imposing an annual enrollment fee in an amount not to exceed \$20 to be paid by all eligible persons in the  
72 Program to defray administrative expenses. Payment of any such fee shall be credited to a special fund to be designated as  
73 the Prescription Assistance Fund. For each year, the maximum unencumbered balance which shall remain in the  
74 Prescription Assistance Fund at the end of any year shall be no more than the administrative cost of the program in the  
75 subsequent year.

76 (3) Determining income eligibility of a person by any reasonable means, including, but not limited to a review of  
77 the person's most recent federal and state income tax returns and copies of income checks. Residency and age/disability  
78 eligibility may be verified by submission of such documents as the Secretary or the Secretary's designee deems reasonable.

79 (4) Rules and regulations the Secretary deemed necessary to implement the Program consistent with the purposes  
80 outlined herein and appropriations provided to implement this Program.

81           § 3006B Annual report.

82           The Department shall maintain data to evaluate the cost and effectiveness of the Program and shall produce an  
83 annual report summarizing participant demographics, utilization, utilization review results and such other available  
84 information as may be needed to evaluate the costs and benefits of the Program.

85           § 3007B Pharmacist duty.

86           A pharmacist shall not dispense or provide a covered prescription drug to an eligible person until the eligible  
87 person makes the required copayment.

88           **Section 2.** Amend 29 Del. C. § 7931(c) by making deletions as shown by strike through and insertions shown by  
89 underline as follows:

90           § 7931 Division of Medicaid and Medical Assistance.

91           (c) The Division of Medicaid and Medical Assistance shall have the power to perform and is responsible for the  
92 performance of all of the powers, duties, and functions specifically related to, Medicaid, the Delaware Healthy Children  
93 Program, the Delaware Prescription Assistance Program, the Chronic Renal Disease Program, the Non-Qualified Non-  
94 Citizen Health Care Program, and other health insurance related programs as administered through the Department of  
95 Health and Social Services.

#### SYNOPSIS

          This Act restores the Delaware Prescription Drug Payment Assistance Program which was eliminated in the Fiscal Year 2018 Annual Appropriations Act.

Author: Senator McBride