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DELAWARE STATE SENATE
149th GENERAL ASSEMBLY

SENATE BILL NO. 228

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:

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

3 Chapter 30B. Prescription Drug Payment Assistance Program.

4 § 3001B. Short title.

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

6 § 3002B. Purpose.

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

10 § 3003B. Definitions.

11 As used in this chapter:

12 (1) "Department" means the Department of Health and Social Services.

13 (2) "Eligible person" means an individual eligible for the Delaware Prescription Drug Payment Assistance
14 Program under § 3004B of this title.

15 (3) "Prescription drugs" means drugs that are self-administered or administered by a lay person that have been
16 approved as safe and effective by the Federal Food and Drug Administration or are otherwise legally marketed in the
17 United States. Medications administered only by a clinically trained person are not covered under this program.
18 Prescription drugs covered under this chapter are limited and subject to the provisions of § 3005B of this title and the
19 rules and regulations adopted under § 3005B of this title.

20 (4) “Program” means the Prescription Drug Payment Assistance Program.

21 (5) “Medicare Part D costs” means monthly premiums, deductibles, and those drug costs falling into Part D
22 coverage gap up to the Program benefit limits and subject to program co-pay requirements as described in §
23 3005B(a)(4) of this title. Medicare Part D costs do not include Medicare Part D co-payments.

24 § 3004B. Eligibility.

25 To be eligible for the Program an individual must meet all of the following:

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

27 (2) Have income that is less than 200% of the Federal Poverty Level (FPL) or have prescription drug expenses
28 that exceed 40% of the individual’s annual income.

29 (3) Be a resident of this State.

30 (4) Be ineligible for Medicaid prescription benefits.

31 (5) Be ineligible for or not receiving a prescription drug benefit or any third party payer prescription benefit,
32 excluding Medicare Part D coverage.

33 (6) Be enrolled in Medicare Part D and Medicare Part D Low Income Subsidy, if eligible, or qualify for a
34 Medicare Part D Special Enrollment Period as an eligible person under the Program

35 (7) Be an individual aged 65 or over or be an individual between the ages 19 and 64 who is otherwise eligible
36 for benefits under Title II of the Social Security Act (Federal Old Age, Survivors and Disability Insurance Benefits)
37 [42 U.S.C. § 401 et seq.].

38 § 3005B. Program administration.

39 (a) The Department shall administer the Program. The Department shall promulgate and adopt rules and
40 regulations as are necessary to implement the Program in a cost-effective manner and to ensure the Program is the payer of
41 last resort for prescription drugs. The Department shall adopt rules and regulations that include all of the following:

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

44 (2) Medicare Part D coverage must be primary to payment assistance under the Program.

45 (3) The Department shall restrict covered prescription drugs covered under the Program to those manufactured
46 by pharmaceutical companies that agree to provide manufacturer rebates under the drug rebate program established for
47 non-Medicaid programs. The Department shall establish a state rebate program that it determines is in the best interests
48 of the citizens who are being served. The rebate amount must be calculated using the full methodology prescribed by
49 the federal government for the Medicaid program. Notwithstanding any provisions of the Delaware Code to the

50 contrary, the Department shall deposit any drug rebate funds received into the Program's account and shall use these
51 funds to meet Program costs.

52 (4) The Department shall develop a copayment requirement, which may not exceed 25% of the acquisition
53 cost but which must be no lower than \$5.00. The copayment requirement under this paragraph applies to prescription
54 drug costs not covered by Medicare Part D.

55 (5) The Department shall provide a clear, written explanation defining the scope of the Program's coverage,
56 the amount of the cost-sharing requirements, and any limitations on access to covered prescription drugs. The
57 Department shall provide notice, when 75% of the cap has been expended. The Department shall also notify
58 individuals of the process to appeal a decision denying reimbursement for prescription drugs or denying an individual's
59 eligibility for the Program. Services are to begin on the first day of the month, following the month that eligibility is
60 determined. An eligible person must be provided an identification card for the Program.

61 (6) A system of administration may not make direct cash payment to any eligible person.

62 (b) The Department may promulgate and adopt rules and regulations that do any of the following:

63 (1) Limit application to the Program to a specific open-enrollment period.

64 (2) Limit Medicare Part D plan options to align with federal Low Income Subsidy benchmarks.

65 (3) Develop prescription quantity limits.

66 (4) Impose an annual enrollment fee in an amount not to exceed \$20 that must be paid by all eligible persons
67 in the Program to defray administrative expenses. Payment of any such fee must be credited to a special fund to be
68 designated as the Prescription Assistance Fund. For each year, the maximum unencumbered balance that may remain
69 in the Prescription Assistance Fund at the end of any year may not be more than the administrative cost of the Program
70 in the subsequent year.

71 (5) Determine income eligibility of an individual by any reasonable means, including a review of the
72 individual's most recent federal and state income tax returns and copies of income checks. Determine residency, age,
73 and disability eligibility by submission of documents the Department deems reasonable.

74 (6) Otherwise enable the Department to implement the Program consistent with the purposes outlined in this
75 chapter and the appropriations provided to implement the Program.

76 § 3006B. Annual report.

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

80 § 3007B. Pharmacist duty.

81 A pharmacist may not dispense or provide a covered prescription drug to an eligible person under this chapter until
82 the eligible person makes the required copayment.

83 Section 2. Amend § 7931, Title 29 of the Delaware Code by making deletions as shown by strike through and
84 insertions shown by underline as follows:

85 § 7931. Division of Medicaid and Medical Assistance.

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

91 Section 3. This Act takes effect on January 1, 2019.

SYNOPSIS

This Act restores the Delaware Prescription Drug Payment Assistance Program (“Program”), which was eliminated in the Fiscal Year 2018 Annual Appropriations Act. This Act replaces Senate Bill 148 and makes the following additional changes:

- (1) Delays implementation of the Act until January 1, 2019, to coordinate with the Medicare Part D benefit year to enable the Department of Health and Social Services (“Department”) to make necessary system changes.
- (2) Makes changes to the defined term “prescription drugs.”
- (3) Removes provisions required to be included in rules and regulations promulgated by the Department.
- (4) Adds provisions that may be included in rules and regulations promulgated by the Department.
- (5) Makes technical corrections to conform the provisions of the restored Program to the standards of the Delaware Legislative Drafting Manual.

Author: Senator McBride