

30:40-35.1

LEGISLATIVE HISTORY CHECKLIST
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("Pharmaceutical Rebate Act")

NJSA: 30:4D-35.1 et seq.

LAWS OF: 1992 CHAPTER: 83

BILL NO: S906

SPONSOR(S) Bassano

DATE INTRODUCED: June 1, 1992

COMMITTEE: ASSEMBLY: ---
SENATE: Budget & Appropriation

AMENDED DURING PASSAGE: Yes Amendments during passage denoted by asterisks

DATE OF PASSAGE: ASSEMBLY: June 29, 1992
SENATE: June 29, 1992

DATE OF APPROVAL: August 11, 1992

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: No
SENATE: Yes

FISCAL NOTE: Yes

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

Report, mentioned in statements: not available as of 12-15-92.

KBG:pp

[SECOND REPRINT]

SENATE, No. 906

STATE OF NEW JERSEY

INTRODUCED JUNE 1, 1992

By Senators BASSANO, Dorsey and Matheussen

1 AN ACT concerning rebates for prescription drugs under the
2 "Pharmaceutical Assistance to the Aged and Disabled"
3 program and supplementing P.L.1975, c.194 (C.30:4D-20 et
4 seq.).

5
6 BE IT ENACTED *by the Senate and General Assembly of the*
7 *State of New Jersey:*

8 1. This act shall be known and may be cited as the
9 "Pharmaceutical Rebate Act."

10 2. a. The "Pharmaceutical Assistance to the Aged and
11 Disabled" program established pursuant to P.L.1975, c.194
12 (C.30:4D-20 et seq.) shall limit the coverage of pharmaceutical
13 products to manufacturers who agree to provide rebates to the
14 State.

15 b. Except for those manufacturers whose pharmaceutical
16 products are not covered under the program pursuant to this
17 section, the program shall not restrict access to manufacturers'
18 pharmaceutical products by means of prior authorization
19 requirements or any other restricting mechanism.

20 c. The Commissioner of Human Services shall contract with
21 manufacturers of pharmaceutical products to provide rebates for
22 pharmaceutical products covered under the "Pharmaceutical
23 Assistance to the Aged and Disabled" program on the same basis
24 as is required pursuant to section 1927 of the federal Social
25 Security Act (42 U.S.C. §1396r-8).

26 d. The rebate agreements entered into pursuant to this act
27 shall take effect on July 1, 1992 and shall be retroactive to that
28 date if entered into after July 1, 1992.

29 (1) A manufacturer of pharmaceutical products who is
30 participating in the "Pharmaceutical Assistance to the Aged and
31 Disabled" program on the effective date of this act shall enter
32 into a rebate agreement with the Commissioner of Human
33 Services within 60 days of the effective date of this act to
34 continue its participation in the program pursuant to the
35 provisions of this act. A participating manufacturer who does not
36 enter into a rebate agreement shall not be eligible to participate
37 in the "Pharmaceutical Assistance to the Aged and Disabled"
38 program after the 90th day after the effective date of this act.

39 (2) Notwithstanding the provisions of paragraph (1) of this
40 subsection to the contrary, if a manufacturer of pharmaceutical
41 products who was participating in the "Pharmaceutical
42 Assistance to the Aged and Disabled" program on the effective
43 date of this act enters into a rebate agreement with the

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SBA committee amendments adopted June 15, 1992.

² Senate floor amendments adopted June 25, 1992.

1 commissioner after the 60th day after the effective date of this
2 act and prior to July 1, ²[1995] 1993², the manufacturer shall be
3 required to pay the rebate for any pharmaceutical products
4 purchased by the program on or after July 1, 1992 through the
5 90-day period that the manufacturer had been a participant in
6 the program. The rebate agreement shall take effect on either
7 January 1 or July 1 of the year in which the rebate agreement is
8 entered into.

9 (3) A manufacturer of pharmaceutical products who was not
10 participating in the "Pharmaceutical Assistance to the Aged and
11 Disabled" program on the effective date of this act may enter
12 into a rebate agreement with the commissioner and become a
13 participating manufacturer. The rebate agreement shall take
14 effect on either January 1 or July 1 of the year in which the
15 rebate agreement is entered into.

16 e. A manufacturer of pharmaceutical products which
17 participates in the "Pharmaceutical Assistance to the Aged and
18 Disabled" program pursuant to this act shall provide to the
19 Commissioner of Human Services such information as he may
20 request to carry out the purposes of this act.

21 f. Any rebate agreement entered into between the Department
22 of Human Services and a manufacturer of pharmaceutical
23 products prior to the effective date of this act shall remain in
24 effect and be considered a rebate agreement in compliance with
25 this act until the date of expiration of the agreement or March
26 31, 1993, whichever date occurs sooner, or until either party
27 terminates the agreement.

28 3. There is established in the Department of Human Services a
29 nonlapsing revolving fund to be known as the "Pharmaceutical
30 Assistance to the Aged and Disabled Rebate Fund." All monies
31 collected from rebate agreements pursuant to this act shall be
32 deposited into this fund and shall be used by the department to
33 offset the cost of benefits provided by the "Pharmaceutical
34 Assistance to the Aged and Disabled" program which are funded
35 by the Casino Revenue Fund.

36 4. Pursuant to the "Administrative Procedure Act," P.L.1968,
37 c.410 (C.52:14B-1 et seq.), the Commissioner of Human Services
38 shall adopt rules and regulations necessary to carry out the
39 purposes of this act and to ensure that the rebate amounts for
40 pharmaceutical products covered under this program do not have
41 the effect of establishing a new federal "best price," as that
42 term is defined pursuant to section 1927 of the federal Social
43 Security Act (42 U.S.C. §1396r-8).

44 5. ¹[One year after the effective date of this act] On or before
45 January 1, 1993², July 1, 1993, and January 1, 1994¹ and June
46 30, 1993², the Commissioner of Human Services shall report to
47 the Governor and the Legislature on the effects of, and
48 recommendations for improvements to, the rebate program.

49 6. This act shall take effect immediately ¹and shall expire on
50 June ²[31, 1994¹] 30, 1993².

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55 Requires pharmaceutical companies to provide rebates for
56 products purchased under PAAD program.

SENATE, No. 906

STATE OF NEW JERSEY

INTRODUCED JUNE 1, 1992

By Senator BASSANO

1 AN ACT concerning rebates for prescription drugs under the
2 "Pharmaceutical Assistance to the Aged and Disabled"
3 program and supplementing P.L.1975, c.194 (C.30:4D-20 et
4 seq.).

5
6 BE IT ENACTED by the Senate and General Assembly of the
7 State of New Jersey:

8 1. This act shall be known and may be cited as the
9 "Pharmaceutical Rebate Act."

10 2. a. The "Pharmaceutical Assistance to the Aged and
11 Disabled" program established pursuant to P.L.1975, c.194
12 (C.30:4D-20 et seq.) shall limit the coverage of pharmaceutical
13 products to manufacturers who agree to provide rebates to the
14 State.

15 b. Except for those manufacturers whose pharmaceutical
16 products are not covered under the program pursuant to this
17 section, the program shall not restrict access to manufacturers'
18 pharmaceutical products by means of prior authorization
19 requirements or any other restricting mechanism.

20 c. The Commissioner of Human Services shall contract with
21 manufacturers of pharmaceutical products to provide rebates for
22 pharmaceutical products covered under the "Pharmaceutical
23 Assistance to the Aged and Disabled" program on the same basis
24 as is required pursuant to section 1927 of the federal Social
25 Security Act (42 U.S.C. §1396r-8).

26 d. The rebate agreements entered into pursuant to this act
27 shall take effect on July 1, 1992 and shall be retroactive to that
28 date if entered into after July 1, 1992.

29 (1) A manufacturer of pharmaceutical products who is
30 participating in the "Pharmaceutical Assistance to the Aged and
31 Disabled" program on the effective date of this act shall enter
32 into a rebate agreement with the Commissioner of Human
33 Services within 60 days of the effective date of this act to
34 continue its participation in the program pursuant to the
35 provisions of this act. A participating manufacturer who does not
36 enter into a rebate agreement shall not be eligible to participate
37 in the "Pharmaceutical Assistance to the Aged and Disabled"
38 program after the 90th day after the effective date of this act.

39 (2) Notwithstanding the provisions of paragraph (1) of this
40 subsection to the contrary, if a manufacturer of pharmaceutical
41 products who was participating in the "Pharmaceutical
42 Assistance to the Aged and Disabled" program on the effective
43 date of this act enters into a rebate agreement with the
44 commissioner after the 60th day after the effective date of this
45 act and prior to July 1, 1995, the manufacturer shall be required

1 to pay the rebate for any pharmaceutical products purchased by
2 the program on or after July 1, 1992 through the 90-day period
3 that the manufacturer had been a participant in the program.
4 The rebate agreement shall take effect on either January 1 or
5 July 1 of the year in which the rebate agreement is entered into.

6 (3) A manufacturer of pharmaceutical products who was not
7 participating in the "Pharmaceutical Assistance to the Aged and
8 Disabled" program on the effective date of this act may enter
9 into a rebate agreement with the commissioner and become a
10 participating manufacturer. The rebate agreement shall take
11 effect on either January 1 or July 1 of the year in which the
12 rebate agreement is entered into.

13 e. A manufacturer of pharmaceutical products which
14 participates in the "Pharmaceutical Assistance to the Aged and
15 Disabled" program pursuant to this act shall provide to the
16 Commissioner of Human Services such information as he may
17 request to carry out the purposes of this act.

18 f. Any rebate agreement entered into between the Department
19 of Human Services and a manufacturer of pharmaceutical
20 products prior to the effective date of this act shall remain in
21 effect and be considered a rebate agreement in compliance with
22 this act until the date of expiration of the agreement or March
23 31, 1993, whichever date occurs sooner, or until either party
24 terminates the agreement.

25 3. There is established in the Department of Human Services a
26 nonlapsing revolving fund to be known as the "Pharmaceutical
27 Assistance to the Aged and Disabled Rebate Fund." All monies
28 collected from rebate agreements pursuant to this act shall be
29 deposited into this fund and shall be used by the department to
30 offset the cost of benefits provided by the "Pharmaceutical
31 Assistance to the Aged and Disabled" program which are funded
32 by the Casino Revenue Fund.

33 4. Pursuant to the "Administrative Procedure Act," P.L.1968,
34 c.410 (C.52:14B-1 et seq.), the Commissioner of Human Services
35 shall adopt rules and regulations necessary to carry out the
36 purposes of this act and to ensure that the rebate amounts for
37 pharmaceutical products covered under this program do not have
38 the effect of establishing a new federal "best price," as that
39 term is defined pursuant to section 1927 of the federal Social
40 Security Act (42 U.S.C. §1396r-8).

41 5. One year after the effective date of this act, the
42 Commissioner of Human Services shall report to the Governor
43 and the Legislature on the effects of, and recommendations for
44 improvements to, the rebate program.

45 6. This act shall take effect immediately.

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48 STATEMENT

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50 This bill, which shall be known as the "Pharmaceutical Rebate
51 Act," requires the "Pharmaceutical Assistance to the Aged and
52 Disabled" program (PAAD) to limit the coverage of
53 pharmaceutical products to manufacturers who agree to provide
54 rebates to the State. The rebates will be provided on the same

1 basis as in the Medicaid program, pursuant to federal law.

2 The bill also establishes the "Pharmaceutical Assistance to the
3 Aged and Disabled Rebate Fund" in the Department of Human
4 Services. All monies received from manufacturers' rebates will
5 be deposited in the fund, and the monies in the fund will be used
6 to offset the cost of benefits provided under the PAAD program
7 that are funded by the Casino Revenue Fund.

8 The bill also requires the Commissioner of Human Services to
9 report to the Governor and the Legislature on the effects of, and
10 recommendations for improvements to, the rebate program one
11 year after the effective date of the bill.

12 Finally the bill authorizes the commissioner to adopt rules and
13 regulations to ensure that the rebate amounts required under the
14 bill do not have the effect of establishing a new federal "best
15 price," and, therefore, avoid what has been termed the "death
16 spiral."

17 In late 1990, the federal government enacted the Omnibus
18 Budget Reconciliation Act of 1990 which compels drug companies
19 to give rebates to state Medicaid programs or lose their privilege
20 of selling to the state programs. This bill applies a similar
21 mandate to the State "Pharmaceutical Assistance to the Aged
22 and Disabled" program (PAAD).

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Requires pharmaceutical companies to provide rebates for
products purchased under PAAD program.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 906

with Senate committee amendments

STATE OF NEW JERSEY

DATED: JUNE 8, 1992

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 906, with committee amendments.

Senate Bill No. 906, as amended, shall be known as the "Pharmaceutical Rebate Act," requires the "Pharmaceutical Assistance to the Aged and Disabled" program (PAAD) to limit the coverage of pharmaceutical products to manufacturers who agree to provide rebates to the State. The rebates will be provided on the same basis as in the Medicaid program, pursuant to federal law.

The bill also establishes the "Pharmaceutical Assistance to the Aged and Disabled Rebate Fund" in the Department of Human Services. All monies received from manufacturers' rebates will be deposited in the fund, and the monies in the fund will be used to offset the cost of benefits provided under the PAAD program that are funded by the Casino Revenue Fund.

The bill also requires the Commissioner of Human Services to report to the Governor and the Legislature on the effects of, and recommendations for improvements to the rebate program.

Finally the bill authorizes the commissioner to adopt rules and regulations to ensure that the rebate amounts required under the bill do not have the effect of establishing a new federal "best price," and, therefore, avoid what has been termed the "death spiral."

In late 1990, the federal government enacted the Omnibus Budget Reconciliation Act of 1990 which compels drug companies to give rebates to state Medicaid programs or lose their privilege of selling to the state programs. This bill applies a similar mandate to the State "Pharmaceutical Assistance to the Aged and Disabled" program (PAAD).

COMMITTEE AMENDMENTS

The committee amended the bill to provide for its expiration on June 30, 1994 and to provide for reports on the program every six months.

FISCAL IMPACT:

No fiscal estimate has been prepared for this bill. The Department of Human Services estimates that the implementation of this act will generate rebates of \$33,359,365 in Fiscal Year 1993. These rebates will be used to offset the cost of benefits provided under the PAAD program that are funded by the Casino Revenue Fund.

LEGISLATIVE FISCAL ESTIMATE TO

[FIRST REPRINT]

SENATE, No. 906

STATE OF NEW JERSEY

DATED: July 7, 1992

Senate Bill No. 906 (1R) of 1992 requires that all manufacturers of prescription drug products which are provided under the "Pharmaceutical Assistance to the Aged and Disabled" (PAAD) program enter into rebate agreements with the Department of Human Services (DHS) in order to ensure that the State obtains these products at the lowest available cost, with certain exceptions. The rebates are to be determined on the same basis as is required pursuant to section 1927 of the federal Social Security Act (42 U.S.C. §1396r-8). The rebate agreements reached are to be retroactive to July 1, 1992. All monies collected through the rebate agreements are to be deposited into a nonlapsing revolving fund to offset the cost of PAAD benefits funded by the Casino Revenue Fund.

DHS and Office of Management and Budget have not provided any fiscal information on the legislation.

The Office of Legislative Services (OLS) notes that DHS' Division of Medical Assistance and Health Services presented information on June 15, 1992 indicating that a "best price" rebate would save over \$33.3 million. OLS is not able to verify or refute DHS' estimate as it does not have information on all prescription medications used in the PAAD program or the amount of the rebates manufacturers provide under federal law.

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.