

*State Pharmacy Assistance Program*

**Description:**

*Creates a Hawaii State Pharmacy Assistance program by merging the current State Pharmacy Assistance program which coordinates the Medicare Part D prescription drug benefit and the Hawaii Rx plus program under a single comprehensive Hawaii State Pharmacy Assistance program umbrella. Requires the Department of Human Services to take all steps necessary to enable participation in joint prescription drug purchasing agreements with any other health benefits plan or organization within or outside of this state that agrees to participate in a joint purchasing agreement.  
(HB1359 CD1)*

HOUSE OF REPRESENTATIVES  
TWENTY-FOURTH LEGISLATURE, 2007  
STATE OF HAWAII

**H.B. NO.** 1359  
H.D. 1  
S.D. 2  
C.D. 1



**A BILL FOR AN ACT**

*RELATING TO THE STATE PHARMACY ASSISTANCE PROGRAM.*

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

SECTION 1. Prescription drugs have become an increasingly important part of health care, especially among older adults. Prescription drugs have also become the most expensive component of health care, accounting for approximately two-thirds of health care costs.

In 2002, the legislature adopted the Hawaii Rx program, intended to help a large population of Hawaii residents better afford their prescription drugs through a

discount program, thereby improving the overall health of Hawaii residents, promoting healthy communities, and protecting public health and welfare. In 2004, the program was amended to become the Rx plus program. Implemented in July 2005, Rx plus has enabled thousands of Hawaii residents, regardless of age, to take advantage of discounted prices for their prescription drug needs when no other insurance or payor are available to them.

In 2005, in anticipation of the new Medicare Modernization Act's Part D program which took effect on January 1, 2006, the state medicare part D state pharmacy assistance program was created. The state medicare part D program covers the co-payments for medicare and medicaid dual eligible clients to ensure a smooth transition of prescription drug coverage from medicaid to medicare.

The federal Medicare Modernization Act of 2005 also provides special relief for qualified state pharmacy assistance programs. Both the Rx plus program and the state medicare part D program are recognizable under federal law as state pharmacy assistance programs and, if they are combined under an umbrella program and approved as a single federally recognized program, could receive enhanced benefits from the federal Centers for Medicare and Medicaid Services.

This Act would consolidate the provisions of both the Rx plus program and the state medicare part D program into a single state pharmacy assistance program for which the State could then seek approval from the federal Centers for Medicare and Medicaid Services to recognize this newly consolidated program as a federally qualified state pharmacy assistance program to receive enhanced benefits.

Through this consolidation, the state medicare part D program would remain the same and its enrollees would be identified as "tier one enrollees" and the Rx plus program would remain the same and its enrollees would be identified as "tier two enrollees." In addition, this Act would provide prescription drug assistance for a subset of the Rx plus population, identified as the "tier three enrollees", who may be at risk of becoming medicaid eligible and for whom the State will seek approval from the federal Centers for Medicare and Medicaid Services to allow the mandating of rebates from prescription drug manufacturers resulting in greater discounts.

The State of Hawaii will continue to receive pharmacy discounts for individuals in the Rx plus program with incomes up to three hundred fifty per cent of the federal poverty level. With federal Centers for Medicare and

Medicaid Services approval, the State will also be able to begin mandating rebates from pharmaceutical companies for prescription drugs purchased by individuals in the Rx plus program who are at risk of qualifying for medicaid with incomes equal to or less than three hundred per cent of the federal poverty level as approved by the federal Centers for Medicare and Medicaid Services.

The State of Hawaii may also be able to combine the purchasing power of these two programs to negotiate larger discounts, similar to federal government and private health insurers, as approved by the federal Centers for Medicare and Medicaid Services. Finally, combining both programs into a federally qualified state pharmacy assistance program streamlines operations and promotes effective administration.

The federal Centers for Medicare and Medicaid Services is requiring a state statute before it will consider a request for approval of the income eligibility for the medicaid at-risk population and set the percentage of state contribution that will be required toward the cost of prescription drugs for the at-risk population, which will allow the mandating of rebates for this group.

This Act, to be known as the "Hawaii Prescription Drug Affordability Act of 2007", seeks to further drive down the cost of prescription drugs for Hawaii's uninsured, underinsured, low-income, elderly, and disabled residents.

SECTION 2. Chapter 346, part XV, Hawaii Revised Statutes, is amended by adding five new sections to be appropriately designated and to read as follows:

"- **Program goals.** The legislature finds that affordability is critical in providing Hawaii residents with access to prescription drugs. This section is enacted by the legislature to enable the State to make prescription drugs more affordable for qualified Hawaii residents and thereby improve the overall health of Hawaii residents, promote healthy communities, and protect the public health and welfare. The legislature also intends that the program be integrated as much as possible with other state health programs. It is not the intention of the legislature for this section to discourage employers from offering to pay, or from paying, for prescription drug benefits for their employees, or to supplant employer-sponsored prescription drug benefit plans.

- **Hawaii Rx plus program.** There is established within the department the Hawaii Rx plus program.

- **Hawaii Rx plus preferred prescription drug list.**

(a) All prescription drugs listed on the Hawaii Rx plus

preferred drug list established in subsection (c) shall be available to Hawaii Rx plus program enrollees at the medicaid discount price, or less. The Hawaii Rx plus preferred prescription drug list shall offer an additional "secondary discount price," or less, on preferred prescription drugs, to be reimbursed through the Hawaii state pharmacy assistance program special fund.

(b) The department shall establish secondary discounts for prescription drugs covered by a rebate agreement and shall promote the use of safe, efficacious, and cost-effective prescription drugs, taking into consideration:

(1) Reduced prices for state and federally capped prescription drug programs;

(2) Differential dispensing fees;

(3) Administrative costs of the department; and

(4) The recommendation of the pharmacy and therapeutic committee.

(c) The department shall establish a Hawaii Rx plus preferred prescription drug list that includes but is not limited to:

(1) Prescription drugs listed on the State's medicaid preferred prescription drug list;

(2) Any other prescription drugs listed on the Hawaii Rx plus preferred prescription drug list pursuant to this section; and

(3) Generic prescription drugs that are priced, using a maximum allowable cost list, as determined by the department.

(d) The pharmacy and therapeutic committee shall review and recommend prescription drugs for placement on the Hawaii Rx plus preferred prescription drug list, striving to identify the safest and most efficacious prescription drugs that are available at the lowest cost. The committee's recommendations may take into consideration any of the following factors:

(1) Therapeutic value for the disease or condition under treatment;

(2) Clinical efficacy;

(3) Safety;

(4) Cost; and

(5) Other relevant factors as determined by the committee.

(e) When considering categories of prescription drugs designed to treat specialized chronic medical conditions and diseases, the committee shall consult with physicians and other health care professionals with specialized clinical knowledge and expertise in this area, either in their capacity as consultants serving on a subcommittee of the committee, or as physicians or pharmacists with a practice or specialty in chronic diseases.

(f) The determination of a prescription drug's safety and efficacy shall be consistent with the standards set forth in the peer-reviewed literature and other available sources, including but not limited to:

(1) The American Hospital Formulary Service Drug Information;

(2) The United States Pharmacopoeia Drug Information;

(3) The DRUGDEX System; and

(4) The American Medical Association Drug Evaluations.

(g) The determination of a prescription drug's net cost shall consider the pharmacy reimbursement amount authorized under section 346- , as adjusted by manufacturer's rebates to be paid to the department. The committee shall determine that a prescription drug has no significant clinical or safety advantages over one or more alternative prescription drugs when used for a given purpose before it may consider the prescription drug's net cost.

**- Participating and nonparticipating manufacturers.**

(a) The names of manufacturers that enter and do not enter into rebate agreements pursuant to this part shall be deemed public information. The department shall release this information to health care providers and the public.

(b) The department or administrator may also provide to health care providers, information about the relative cost of prescription drugs produced by manufacturers that enter into rebate agreements compared to the cost of prescription drugs produced by those that do not enter into rebate agreements, as allowed by law.

- Pharmacy reimbursement. (a) A pharmacy shall submit claims to the department to verify the amount charged to tier two and tier three program participants. On a schedule to be determined by the department, the department shall reimburse each pharmacy for the discounts of prescription drugs provided to program participants.

(b) The department shall collect pharmacy use data necessary to calculate the amount of the manufacturer rebate under section 346-. The department shall protect the confidentiality of information received as required under state or federal law, rule, or regulation.

(c) The department shall not impose transaction charges on participating pharmacies that submit claims or receive payments under the program."

SECTION 3. Section 461-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

"Telepharmacy" means remote dispensing of medications as directed by a licensed pharmacist via a computer or telephone link to a secure machine where the accuracy of the prescription is verified by a doctor, nurse, pharmacist assistant, or pharmacy technician."

SECTION 4. Chapter 346, Hawaii Revised Statutes, is amended by amending the title of part XV to read as follows:

"[+]PART XV.[+] HAWAII STATE PHARMACY ASSISTANCE PROGRAM"

SECTION 5. Section 346-341, Hawaii Revised Statutes, is amended as follows:

1. By adding fifteen new definitions to be appropriately inserted and to read:

"Administrator" means the director.

"Discount" means the amount by which the price of a prescription drug sold by a pharmacy is reduced as determined by the department.

"Hawaii Rx plus program" means the prescription drug discount program that provides discounts to qualified Hawaii residents who are uninsured or underinsured through manufacturer rebates and pharmacy discounts.

"Hawaii state pharmacy assistance program" means the program established pursuant to section 346-342 that pays the amount of co-payments for prescription drugs for eligible seniors and disabled individuals under the medicare part D drug benefit and the prescription drug discounts for the Hawaii Rx plus program.

"Initial discount price" as it pertains to a prescription drug means the price that the department pays

medicaid participating pharmacies to purchase the prescription drug for its medicaid members.

"Manufacturer" means anyone who is engaged in manufacturing, preparing, propagating, compounding, processing, packaging, repackaging, or labeling a prescription drug.

"Participating pharmacy" or "retail pharmacy" means a retail pharmacy located in this state, or another business licensed to dispense prescription drugs in this state, that elects to participate in the program.

"Pharmacy and therapeutic committee" means the committee established by the department that advises the state medicaid director on the Hawaii Rx plus preferred prescription drug list.

"Preferred prescription drug" includes but is not limited to:

(1) A prescription drug listed on the State's medicaid preferred prescription drug list;

(2) An antipsychotic prescription drug;

(3) An antidepressant prescription drug;

(4) A chemotherapy prescription drug;

(5) An antiretroviral prescription drug;

(6) An immunosuppressive prescription drug; and

(7) Any other prescription drug listed on the Hawaii Rx plus preferred prescription drug list pursuant to this part.

"Program" means the Hawaii state pharmacy assistance program.

"Secondary discount price" as it pertains to a prescription drug means the initial discount price less any further discounts paid out of the Hawaii state pharmacy assistance program special fund.

"State medicare part D program" means the medicare part D state pharmacy assistance program that provides co-payments for prescription drugs for qualified Hawaii residents.

"Tier one enrollee" means a resident who qualifies for the state medicare part D program.

"Tier two enrollee" means a resident who qualifies for the Hawaii Rx plus program and whose household income is

equal to or less than three hundred fifty per cent of the federal poverty level.

"Tier three enrollee" means a resident who qualifies for the Hawaii Rx plus program and whose household income is equal to or less than three hundred per cent of the federal poverty level as approved by the federal Centers for Medicare and Medicaid Services."

2. By amending the definitions of "asset test", "contractor", and "enrollee" to read:

"Asset test" means the asset limits for eligibility in the state [~~pharmacy assistance program~~] medicare part D program as defined by the Medicare Modernization Act and any amendments thereto.

"Contractor" means the person, partnership, limited liability company, or corporate entity that has an approved contract with the department to administer any component of the Hawaii state pharmacy assistance program as established under this part.

"Enrollee" means a resident of this State who meets the conditions specified in this part and in departmental rules relating to eligibility for participating in the Hawaii state pharmacy assistance program and whose application for enrollment in the Hawaii state pharmacy assistance program has been approved by the department."

SECTION 6. Section 346-342, Hawaii Revised Statutes, is amended to read:

**"[~~§~~]-342[~~]~~—~~State~~] Hawaii state pharmacy assistance program. (a) There is established within the department the Hawaii state pharmacy assistance program[~~—~~], which shall provide benefits for enrollees in the state medicare part D program and the Hawaii Rx plus program. Provided that there are no federally approved prescription drug plans available in the State that provide a full coverage prescription drug benefit, the state [~~pharmacy assistance program~~] medicare part D program may coordinate the prescription drug coverage with [~~the~~] any benchmark federal medicare part D prescription drug plan benefit, including related supplies, as determined by the department, to each resident who meets the eligibility requirements as outlined in section 346-343. The Hawaii Rx plus program shall combine the purchasing power of all qualified residents to enable the State to reduce prescription drug costs, as approved by the federal Centers for Medicare and Medicaid Services, and further improve the quality of health care for qualified Hawaii residents in the program, thereby improving the overall health of Hawaii residents, promoting**



healthy communities, and protecting the public health and welfare.

(b) The department may provide enrollment assistance to eligible individuals into the state [~~pharmacy assistance program.~~] medicare part D program. Enrollment for medicaid dual eligible persons shall begin no later than October 1, 2005.

(c) [~~The~~] For the state medicare part D program, the department shall allow any willing benchmark prescription drug plan approved by the federal Centers for Medicare and Medicaid Services to provide the coordination of benefits between the [State's medicare prescription drug program] state medicare part D program and the federal medicare part D drug benefit.

(d) The department may administer the Hawaii state pharmacy assistance program or contract with a third party or parties in accordance with chapter 103F to administer any single component or combination of components of the Hawaii state pharmacy assistance program, including outreach, eligibility, enrollment, claims, administration, rebate negotiations and recovery, and redistribution, [~~in order~~] to coordinate the prescription drug benefits of the Hawaii state pharmacy assistance program and the federal medicare part D drug benefit.

(e) Any contract with [~~third parties to administer any component of the state pharmacy assistance program~~] a contractor shall be established either at no cost to the State, or on a contingency-fee basis and with no up-front costs to the State, as may be negotiated by the department.

(f) Any contract with [~~third parties to administer any component of state pharmacy assistance program~~] a contractor shall prohibit the contractor from receiving any compensation or other benefits from any pharmaceutical manufacturer participating in the Hawaii state pharmacy assistance program.

(g) A prescription drug manufacturer [~~or labeler~~] that sells prescription drugs in the [~~State~~] state may enter into a rebate agreement with the department. The rebate agreement may be agreed upon by the manufacturer [~~or the labeler~~] to make rebate payments to the department each calendar quarter or according to a schedule established by the department.

(h) The department or contractor may negotiate the amount of the rebate required from a manufacturer [~~or labeler~~] in accordance with this part.

(i) The department or contractor [~~may~~] shall take into consideration the rebate calculated under the medicaid

rebate program pursuant to title 42 United States Code Section 1396r-8, the average [~~wholesale~~] manufacturer price of prescription drugs, and any other cost data related to prescription drug prices and price discounts.

(j) The department or contractor shall use their best efforts to obtain the best possible rebate amount.

(k) The department may prescribe the application and enrollment procedures for prospective enrollees.

(l) The department shall conduct ongoing quality assurance activities similar to those used in the State's medicaid program.

(m) A manufacturer that sells prescription drugs in the state shall enter into a rebate agreement with the department as approved by the federal Centers for Medicare and Medicaid Services."

SECTION 7. Section 346-343, Hawaii Revised Statutes, is amended to read as follows:

**"-343 Eligibility.** (a) All residents of the [~~State~~] state shall be eligible to participate in the Hawaii state pharmacy assistance program; provided that the applicant[~~-~~] meets the following eligibility requirements:

(1) Tier one enrollee:

[~~(1)~~] (A) Is a resident of Hawaii;

[~~(2)~~] (B) Is sixty-five years or older, or is disabled and receiving a social security benefit;

[~~(3)~~] (C) Has a household income [~~at or below~~] equal to or less than one hundred fifty per cent of the federal poverty level;

[~~(4)~~] (D) Meets the asset test; [~~and~~]

[~~(5)~~] (E) Is not a member of a retirement plan who is receiving a benefit from the Medicare Modernization Act[~~-~~]; and

(F) Is medicaid dual eligible for or receiving medicare part D prescription drug benefit;

(2) Tier two enrollee:

(A) Is a resident of Hawaii;

(B) Has a household income equal to or less than three hundred fifty per cent of the federal poverty level; and

(C) Lacks prescription drug coverage or has exceeded the extent of the resident's prescription drug benefits;  
and

(3) Tier three enrollee:

(A) Is a resident of Hawaii;

(B) Has a household income equal to or less than three hundred per cent of the federal poverty level, as approved by the federal Centers for Medicare and Medicaid Services; and

(C) Lacks prescription drug coverage or has exceeded the extent of the resident's prescription drug benefits.

(b) State [~~pharmacy assistance~~] medicare part D program applicants who are enrolled in any other public assistance program providing pharmaceutical benefits, other than the Medicare Modernization Act and medicaid, shall be ineligible for the state [~~pharmacy assistance~~] medicare part D program as long as they receive pharmaceutical benefits from that other public assistance program, unless the applicant is eligible for medicare. Residents who qualify for, or are enrolled in, the Hawaii Rx plus program shall be eligible for the state [~~pharmacy assistance~~] medicare part D program; provided that they meet all other state [~~pharmacy assistance~~] medicare part D program requirements.

(c) [~~State pharmacy assistance program applicants~~] Applicants who are enrolled in a private sector plan or insurance providing payments for prescription drugs shall be ineligible to receive benefits from the state [~~pharmacy assistance~~] medicare part D program.

(d) The department:

(1) Shall establish procedures to determine eligibility and shall issue program enrollment cards to enrollees;

(2) Shall provide for outreach efforts to build public awareness of the Hawaii state pharmacy assistance program and maximize the enrollment of eligible residents; and

(3) May adjust the requirements and terms of the program by rule to accommodate any federally funded or authorized prescription drug program."

SECTION 8. Section 346-344, Hawaii Revised Statutes, is amended to read as follows:

**"-344 Benefits.** (a) For [~~persons meeting the eligibility requirements in section 346-343,~~] tier one enrollees, the Hawaii state pharmacy assistance program may pay all or some of the co-payments required under the federal medicare part D pharmacy benefit program, subject to the sufficiency of funds in the Hawaii state pharmacy assistance program special fund, as determined by the department.

(b) [~~The state pharmacy assistance program~~] For tier one enrollees, the state medicare part D program is the payor of last resort subject to the sufficiency of funds in the Hawaii state pharmacy assistance program special fund, as determined by the department.

(c) The [~~state pharmacy assistance program~~] benefits for tier one enrollees shall be funded with state appropriations, including funds derived from revenues to the State from rebates paid by pharmaceutical manufacturers pursuant to section 346-342(g), and with savings resulting from medicare prescription drug coverage for the medicaid dual eligible population.

(d) For tier two and tier three enrollees, each retail pharmacy participating in the Hawaii Rx plus program shall sell prescription drugs to qualified residents at the initial discount price, as determined by the department pursuant to this part.

(e) Beginning July 1, 2004, a participating pharmacy shall offer the initial discount price.

(f) No later than July 1, 2008, a participating pharmacy shall offer the secondary discount price to tier three enrollees, if available.

(g) The benefits for tier two and tier three enrollees shall be funded with state appropriations, including funds, as approved by the federal Centers for Medicare and Medicaid Services, derived from revenues to the State from rebates paid by pharmaceutical manufacturers pursuant to section 346-342(g) and to Title 42 United States Code Section 1396r-8."

SECTION 9. Section 346-345, Hawaii Revised Statutes, is amended to read as follows:

**"[~~f~~]-345[~~] Special~~] Hawaii state pharmacy assistance program special fund.** (a) There is established within the state treasury to be administered by the department, the Hawaii state pharmacy assistance program special fund, into which shall be deposited:

(1) All moneys received from manufacturers that pay rebates as provided in section 346-342(g);

(2) Appropriations made by the legislature to the fund; and

(3) Any other revenues designated for the fund.

(b) Moneys in the Hawaii state pharmacy assistance program special fund may be used for:

(1) Reimbursement payments to participating pharmacies for co-payments required under the federal medicare part D pharmacy benefit program as provided to [~~state pharmacy assistance program participants~~] tier one enrollees;

(2) Reimbursement payments to participating pharmacies for discounts provided to tier two and tier three enrollees;

[~~(2)~~] (3) The costs of administering the Hawaii state pharmacy assistance program, including salary and benefits of employees, computer costs, and contracted services as provided in section 346-342(d); and

[~~(3)~~] (4) Any other purpose deemed necessary by the department for the purpose of operating and administering the Hawaii state pharmacy [~~+~~assistance~~+~~] program.

All interest on special fund balances shall accrue to the special fund. Upon dissolution of the Hawaii state pharmacy assistance program special fund, any unencumbered moneys in the fund shall lapse to the general fund.

(c) The department shall expend all [~~revenues~~] moneys received from rebates paid by pharmaceutical manufacturers pursuant to section 346-342(g) to pay for the benefits to enrollees in the Hawaii state pharmacy assistance program, the costs of administering the program, and reimbursement of medicaid pharmaceutical costs~~[-]~~; provided that any mandatory rebate revenues shall not be used for administrative program costs, and general funds shall be used to pay for a percentage of the secondary discount price unless otherwise approved by the federal Centers for Medicare and Medicaid Services."

SECTION 10. Section 461-9, Hawaii Revised Statutes, is amended to read as follows:

**"-9 Pharmacist in charge; pharmacy personnel.** (a) A registered pharmacist shall be in personal and immediate charge of the pharmacy and personnel employed in the

pharmacy. Temporary absences of the registered pharmacist shall be unlawful except for periods of time and under circumstances as authorized under the rules of the board. During any absence of the registered pharmacist, prescriptions may not be filled, compounded, or received by telephone and no drugs shall be sold; provided that this shall not preclude the sale at those times of things that might be sold were the pharmacy a store not subject to this chapter. No person other than a registered pharmacist or a pharmacy intern under the registered pharmacist's immediate supervision shall fill or compound prescriptions except as provided by subsection (c).

(b) No person shall practice as a pharmacy intern without having first obtained a permit from the board. The board shall adopt rules pursuant to chapter 91 defining the functions of a pharmacy intern, establishing the requirements to be met by an applicant for a pharmacy intern permit, and specifying the duration of the permit and the procedures for the immediate supervision of the pharmacy intern by a registered pharmacist.

(c) A pharmacy technician may be employed to assist the registered pharmacist under rules adopted by the board pursuant to chapter 91 that define the qualifications and functions of the pharmacy technician and provide the procedures for control and supervision by a registered pharmacist.

(d) Pharmacies that dispense medications pursuant to section 340B of the United States Public Health Service Act may engage in telepharmacy dispensing of medication subject to rules created by the board; provided that telepharmacy dispensing of medication shall not be authorized in locations within five miles of a pharmacy staffed with a pharmacist licenses pursuant to this chapter."

SECTION 11. Part XIII of chapter 346, Hawaii Revised Statutes, is repealed.

SECTION 12. The department of human services shall conduct a study to gather information on the size of the target population, utilization data, and other information as needed for the department to identify the amount of the appropriation needed to implement the secondary discount price and other costs of the program. The department shall submit a report of its findings and recommendations from this study to the legislature no later than twenty days prior to the convening of the regular session of 2008.

SECTION 13. There is appropriated out of the general revenues of the State of Hawaii the sum of \$50,000 or so much thereof as may be necessary for fiscal year 2007-2008

to be paid into the Hawaii state pharmacy assistance program special fund.

There is appropriated out of the Hawaii state pharmacy assistance program special fund the sum of \$50,000 or so much thereof as may be necessary for fiscal year 2007-2008 to the department of human services for the purposes of conducting the study mandated in section 12 of this Act.

The sum appropriated by this Act shall be expended by the department of human services for the purposes of conducting the study mandated in section 12 of this Act.

SECTION 14. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 15. This Act shall take effect on July 1, 2008; provided that section 10 shall take effect upon its approval; provided further that sections 12 and 13 shall take effect on July 1, 2007.