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# A BILL FOR AN ACT

RELATING TO PRESCRIPTION DRUG COST CONTAINMENT AND AFFORDABLE  
ACCESS.

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

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

6           In 2002, the legislature adopted the Hawaii Rx program,  
7 intended to help a large population of Hawaii residents better  
8 afford their prescription drugs through a discount program,  
9 thereby increasing the overall health of Hawaii residents,  
10 promoting healthy communities, and protecting public health and  
11 welfare. In 2004, the program was amended to become the Hawaii  
12 Rx plus program. Implemented in July 2005, Hawaii Rx plus has  
13 enabled thousands of Hawaii residents, regardless of age, to  
14 take advantage of discounted prices for their prescription drug  
15 needs when no other insurance or payor are available to them.

16           In 2005, in anticipation of the new Medicare Modernization  
17 Act's Part D program, which took effect on January 1, 2006, the



1 state medicare part D state pharmacy assistance program was  
2 created. The state medicare part D program covers the co-  
3 payments for medicare and medicaid dual eligible clients to  
4 ensure a smooth transition of prescription drug coverage from  
5 medicaid to medicare.

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

14 This Act would consolidate both the Hawaii Rx plus program  
15 and the state medicare part D program into a single state  
16 pharmacy assistance program for which the State could then seek  
17 approval from the federal Centers for Medicare and Medicaid  
18 Services to recognize this newly consolidated program as a  
19 federally qualified state pharmacy assistance program for the  
20 purpose of receiving enhanced benefits.

21 Through this consolidation, the state medicare part D  
22 program would remain the same and its enrollees would be



1 identified as "tier one enrollees" and the Hawaii Rx plus  
2 program would remain the same and its enrollees would be  
3 identified as "tier two enrollees". In addition, this Act would  
4 provide prescription drug assistance for a subset of the Hawaii  
5 Rx plus population, identified as the "tier three enrollees",  
6 who may be at risk of becoming medicaid eligible and for whom  
7 the State will seek approval from the federal Centers for  
8 Medicare and Medicaid Services to allow the mandating of rebates  
9 from drug manufacturers resulting in greater discounts.

10 The State of Hawaii will continue to receive pharmacy  
11 discounts for individuals in the Hawaii Rx plus program with  
12 incomes up to three hundred fifty per cent of the federal  
13 poverty level. With federal Centers for Medicare and Medicaid  
14 Services approval, the State will also be able to begin  
15 mandating rebates from pharmaceutical companies for prescription  
16 drugs purchased by individuals in the Hawaii Rx plus program who  
17 are at risk of qualifying for medicaid with incomes equal to or  
18 less than three hundred per cent of the federal poverty level as  
19 approved by the federal Centers for Medicare and Medicaid  
20 Services.

21 The State of Hawaii may also be able to combine the  
22 purchasing power of these two programs to negotiate larger



1 discounts, similar to federal government and private health  
2 insurers, as approved by the federal Centers for Medicare and  
3 Medicaid Services. Finally, combining both programs into a  
4 federally qualified state pharmacy assistance program  
5 streamlines operations and promotes effective administration.

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

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

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

20 "§346-A Program goals. The legislature finds that  
21 affordability is critical in providing Hawaii residents with  
22 access to prescription drugs. This section is enacted by the



1 legislature to enable the State to make prescription drugs more  
2 affordable for qualified Hawaii residents and thereby increase  
3 the overall health of Hawaii residents, promote healthy  
4 communities, and protect the public health and welfare. The  
5 legislature also intends that the program be integrated as much  
6 as possible with other state health programs. It is not the  
7 intention of the legislature for this law to discourage  
8 employers from offering to pay, or from paying for prescription  
9 drug benefits for their employees, or to supplant employer-  
10 sponsored prescription drug benefit plans.

11 **§346-B Hawaii Rx plus preferred drug list.** (a) All drugs  
12 shall be available at the medicaid discount price, or less. The  
13 Hawaii Rx plus preferred drug list shall offer an additional  
14 "secondary discount price," or less, on preferred drugs, to be  
15 reimbursed through the Hawaii state pharmacy assistance program  
16 special fund.

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

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



- 1        (2) Differential dispensing fees;
- 2        (3) Administrative costs of the department; and
- 3        (4) The recommendation of the pharmacy and therapeutic
- 4                committee.
- 5        (c) The department shall establish a Hawaii Rx plus
- 6 preferred drug list that includes but is not limited to:
- 7        (1) Drugs listed on the State's medicaid preferred drug
- 8                list;
- 9        (2) Any other drugs listed on the Hawaii Rx plus preferred
- 10                drug list pursuant to this section; and
- 11        (3) Generic drugs that are priced using a maximum
- 12                allowable cost list, as determined by the department.
- 13        (d) The pharmacy and therapeutic committee shall review
- 14 and recommend drugs for placement on the Hawaii Rx plus
- 15 preferred drug list, striving to identify the safest and most
- 16 efficacious drugs that are available at the lowest cost. The
- 17 committee's recommendations may take into consideration any of
- 18 the following factors:
- 19        (1) Therapeutic value for the disease or condition under
- 20                treatment;
- 21        (2) Clinical efficacy;
- 22        (3) Safety;



1       (4) Cost; and

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

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

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

14       (1) The American Hospital Formulary Service Drug  
15 Information;

16       (2) The United States Pharmacopoeia Drug Information;

17       (3) The DRUGDEX System; and

18       (4) The American Medical Association Drug Evaluations.

19       (g) The determination of a drug's net cost shall consider  
20 the pharmacy reimbursement amount authorized under section  
21 346-D, as adjusted by manufacturer's rebates to be paid to the  
22 department. The committee shall determine that a drug has no



1 significant clinical or safety advantages over one or more  
2 alternative drugs when used for a given purpose before it may  
3 consider the drug's net cost.

4 **§346-C Participating and nonparticipating manufacturers**

5 **and labelers.** (a) The names of manufacturers that enter and do  
6 not enter into rebate agreements pursuant to this section shall  
7 be deemed public information. The department shall release this  
8 information to health care providers and the public.

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

14 **§346-D Pharmacy reimbursement.** (a) A pharmacy shall  
15 submit claims to the department to verify the amount charged to  
16 tier two and tier three program participants. On a schedule to  
17 be determined by the department, the department shall reimburse  
18 each pharmacy for the discounts of prescription drugs provided  
19 to program participants.

20 (b) The department shall collect pharmacy use data  
21 necessary to calculate the amount of the manufacturer rebate  
22 under section 346-C. The department shall protect the





1 confidentiality of information received as required under state  
2 or federal law, rule, or regulation.

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

6 SECTION 3. Section 346-341, Hawaii Revised Statutes, is  
7 amended by:

8 1. Adding fourteen new definitions to be appropriately  
9 inserted and to read as follows:

10 "Administrator" means the director of human services.

11 "Discount" means the amount by which the price of a drug  
12 sold by a pharmacy is reduced as determined by the department of  
13 human services.

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

18 "Hawaii state pharmacy assistance program" means the  
19 program that covers the co-payments for eligible seniors and  
20 disabled individuals under the medicare part D drug benefit and  
21 the prescription drug discounts for the Hawaii Rx plus program.



1       "Initial discount price" as it pertains to a drug means the  
2 price that the department pays medicaid participating pharmacies  
3 to purchase the drug for its medicaid members.

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

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

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

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

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

17       (2) An antipsychotic drug;

18       (3) An antidepressant drug;

19       (4) A chemotherapy drug;

20       (5) An antiretroviral drug;

21       (6) An immunosuppressive drug; and



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

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

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

9        "Tier one enrollee" means a beneficiary who qualifies for  
10 the medicare part D state pharmacy assistance program.

11        "Tier two enrollee" means a beneficiary who qualifies for  
12 the Hawaii Rx plus program and whose household income is equal  
13 to or less than three hundred fifty per cent of the federal  
14 poverty level.

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

20        2. Amending the definitions of "asset test", "contractor",  
21 and "enrollee" to read as follows:



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

5 "Contractor" means the person, partnership, or corporate  
6 entity that has an approved contract with the department to  
7 administer the Hawaii state pharmacy assistance program as  
8 established under this part.

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

15 SECTION 4. Section 346-342, Hawaii Revised Statutes, is  
16 amended by amending subsections (a), (b), and (c) to read as  
17 follows:

18 "(a) There is established within the department the Hawaii  
19 state pharmacy assistance program[-], which shall provide  
20 benefits for enrollees in the state medicare part D program and  
21 the Hawaii Rx plus program. Provided that there are no  
22 federally approved prescription drug plans available in the



1 State that provide a full coverage prescription drug benefit,  
2 the [~~state pharmacy assistance program~~] state medicare part D  
3 program may coordinate the prescription drug coverage with [~~the~~]  
4 any benchmark federal medicare part D prescription drug plan  
5 benefit, including related supplies, as determined by the  
6 department, to each resident who meets the eligibility  
7 requirements as outlined in section 346-343. The Hawaii Rx plus  
8 program shall combine the purchasing power of all qualified  
9 residents to enable the State to reduce prescription drug costs,  
10 as approved by the federal Centers for Medicare and Medicaid  
11 Services, and further improve the quality of healthcare for  
12 qualified Hawaii residents in the program, thereby increasing  
13 the overall health of Hawaii residents, promoting healthy  
14 communities, and protecting the public health and welfare.

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

20 (c) [~~The~~] For the state medicare part D program, the  
21 department shall allow any willing benchmark prescription drug  
22 plan approved by the federal Centers for Medicare and Medicaid



1 Services to provide the coordination of benefits between the  
2 [~~State's medicare prescription drug program~~] state medicare part  
3 D program and the federal medicare part D drug benefit."

4 SECTION 5. Section 346-342, Hawaii Revised Statutes, is  
5 amended by amending subsection (i) to read as follows:

6 "(i) The department or contractor [~~may~~] shall take into  
7 consideration the rebate calculated under the medicaid rebate  
8 program pursuant to title 42 United States Code Section 1396r-8,  
9 the average [~~wholesale~~] manufacturer price of prescription  
10 drugs, and any other cost data related to prescription drug  
11 prices and price discounts."

12 SECTION 6. Section 346-343, Hawaii Revised Statutes, is  
13 amended to read as follows:

14 "**S346-343 Eligibility.** (a) All residents of the State  
15 shall be eligible to participate in the Hawaii state pharmacy  
16 assistance program; provided that the applicant[+] meets the  
17 following eligibility requirements:

18 (1) Tier one enrollee:

19 [+1] (A) Is a resident of Hawaii;

20 [+2] (B) Is sixty-five years or older, or is disabled and  
21 receiving a social security benefit;



- 1        [~~3~~] (C)    Has a household income [~~at or below~~] equal to or  
2                    less than one hundred fifty per cent of the  
3                    federal poverty level;
- 4        [~~4~~] (D)    Meets the asset test; [and]
- 5        [~~5~~] (E)    Is not a member of a retirement plan who is  
6                    receiving a benefit from the Medicare  
7                    Modernization Act[~~-~~];
- 8                    (F)    Is medicaid dual eligible, or receiving medicare  
9                    part D prescription drug benefit or both; and
- 10                    (G)    Is enrolled in the program.
- 11        (2)    Tier two enrollee:
- 12                    (A)    Is a resident of Hawaii;
- 13                    (B)    Has a family income equal to or less than three  
14                    hundred fifty per cent of the federal poverty  
15                    level;
- 16                    (C)    Lacks prescription drug coverage or has exceeded  
17                    the extent of the resident's prescription drug  
18                    benefits; and
- 19                    (D)    Is enrolled in the program.
- 20        (3)    Tier three enrollee:
- 21                    (A)    Is a resident of Hawaii;



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

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

8           (D) Is enrolled in the program.

9           (b) [~~State pharmacy assistance~~] Tier one program

10 applicants who are enrolled in any other public assistance  
11 program providing pharmaceutical benefits, other than the  
12 Medicare Modernization Act and medicaid, shall be ineligible for  
13 the [~~state pharmacy assistance~~] state medicare part D program as  
14 long as they receive pharmaceutical benefits from that other  
15 public assistance program, unless the applicant is eligible for  
16 medicare. Residents who qualify for, or are enrolled in, the  
17 Hawaii Rx plus program shall be eligible for the [~~state pharmacy~~  
18 ~~assistance~~] state medicare part D program; provided that they  
19 meet all other [~~state pharmacy assistance~~] state medicare part D  
20 program requirements.

21           (c) [~~State pharmacy assistance program applicants~~]

22 Applicants who are enrolled in a private sector plan or





1 insurance providing payments for prescription drugs shall be  
2 ineligible to receive benefits from the [~~state pharmacy~~  
3 ~~assistance~~] state medicare part D program.

4 (d) The department:

5 (1) Shall establish procedures to determine eligibility  
6 and shall issue program enrollment cards to eligible  
7 qualified residents;

8 (2) Shall provide for outreach efforts to build public  
9 awareness of the program and maximize the enrollment  
10 of eligible qualified residents; and

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

14 SECTION 7. Section 346-344, Hawaii Revised Statutes, is  
15 amended to read as follows:

16 "**§346-344 Benefits.** (a) For persons meeting the tier one  
17 eligibility requirements in section 346-343, the Hawaii state  
18 pharmacy assistance program may pay all or some of the co-  
19 payments required under the federal medicare part D pharmacy  
20 benefit program, subject to the sufficiency of funds in the  
21 Hawaii state pharmacy assistance program special fund, as  
22 determined by the department.



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

6           (c) The ~~[state pharmacy assistance program]~~ benefits for  
7 tier one enrollees shall be funded with state appropriations,  
8 including funds derived from revenues to the State from rebates  
9 paid by pharmaceutical manufacturers pursuant to section 346-  
10 342(g), and with savings resulting from medicare prescription  
11 drug coverage for the medicaid dual eligible population.

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

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

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

21           (g) The benefits for tier two and tier three enrollees  
22 shall be funded with state appropriations, including funds, as



1 approved by the federal Centers for Medicare and Medicaid  
2 Services, derived from revenues to the State from rebates paid  
3 by pharmaceutical manufacturers pursuant to title 42 United  
4 States Code section 1396r-8 and to section 346-342(g)."

5 SECTION 8. Section 346-345, Hawaii Revised Statutes, is  
6 amended to read as follows:

7 "[+]§346-345[+] **Special fund.** (a) There is established  
8 within the state treasury to be administered by the department,  
9 the Hawaii state pharmacy assistance program special fund, into  
10 which shall be deposited:

- 11 (1) All moneys received from manufacturers that pay  
12 rebates as provided in section 346-342(g);  
13 (2) Appropriations made by the legislature to fund; and  
14 (3) Any other revenues designated for the fund.

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

- 17 (1) Reimbursement payments to participating pharmacies for  
18 co-payments required under the federal medicare part D  
19 pharmacy benefit program as provided to ~~state~~  
20 ~~pharmacy assistance program participants,~~ tier one  
21 enrollees;



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

4        [+2+] (3) The costs of administering the Hawaii state  
5        pharmacy assistance program, including salary and  
6        benefits of employees, computer costs, and contracted  
7        services as provided in section 346-342(d); and

8        [+3+] (4) Any other purpose deemed necessary by the  
9        department for the purpose of operating and  
10        administering the Hawaii state pharmacy  
11        [+}assistance[+] program.

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

16        (c) The department shall expend all [~~revenues~~] moneys in  
17        the Hawaii state pharmacy assistance program special fund to pay  
18        for the benefits to enrollees in the Hawaii state pharmacy  
19        assistance program, the costs of administering the program, and  
20        reimbursement of medicaid pharmaceutical costs[-]; provided that  
21        any mandatory rebate revenues cannot be used for administrative  
22        program costs and general funds shall be used to pay for a



1 percentage of the secondary discount price unless otherwise  
2 approved by the federal Centers for Medicare and Medicaid  
3 Services."

4 SECTION 9. Chapter 346, Hawaii Revised Statutes, is  
5 amended by amending the title of part XV to read as follows:

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

7 SECTION 10. Part XIII of chapter 346, Hawaii Revised  
8 Statutes, is repealed.

9 SECTION 11. The department of human services shall conduct  
10 a study in order to gather information on the size of the target  
11 population, utilization data, and other information as needed in  
12 order for the department of human services to identify the  
13 amount of the appropriation needed to implement the secondary  
14 discount price and other costs of the program.

15 SECTION 12. There is appropriated out of the general  
16 revenues of the State of Hawaii the sum of \$ \_\_\_\_\_, or so  
17 much thereof as may be necessary for fiscal year 2007-2008, to  
18 be paid into the Hawaii state pharmacy assistance program  
19 special fund.

20 There is appropriated out of the Hawaii state pharmacy  
21 assistance program special fund the sum of \$ \_\_\_\_\_, or so  
22 much thereof as may be necessary for fiscal year 2007-2008, to



1 the department of human services for the purposes of conducting  
2 the study mandated in section 11 of this Act.

3 The sum appropriated by this Act shall be expended by the  
4 department of human services for the purposes of conducting the  
5 study mandated in section 11 of this Act.

6 SECTION 13. Statutory material to be repealed is bracketed  
7 and stricken. New statutory material is underscored.

8 SECTION 14. In codifying the new sections added by section  
9 2 of this Act, the revisor of statutes shall substitute  
10 appropriate section numbers for the letters used in designating  
11 the new sections in this Act.

12 SECTION 15. This Act shall take effect on July 1, 2008,  
13 except for sections 11 and 12 which shall take effect on July 1,  
14 2007.



**Report Title:**

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 drug benefit and the Hawaii Rx plus program under a single comprehensive Hawaii state pharmacy assistance program umbrella. (SD1)

