

Act No. 499
Public Acts of 2000
Approved by the Governor
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**STATE OF MICHIGAN
90TH LEGISLATURE
REGULAR SESSION OF 2000**

Introduced by Senators Gast, Shugars, Steil, North, Gougeon, Hammerstrom, Hoffman, Stille, Johnson, McManus, Bullard, Schwarz, Vaughn, Van Regenmorter, Emerson, Rogers, Sikkema, Bennett, Goschka, Jaye, McCotter, A. Smith, Peters, DeBeaussaert, Miller, Murphy, Hart, Young, Schuette, Leland, Dunaskiss and Byrum

ENROLLED SENATE BILL No. 1278

AN ACT to create certain prescription programs relating to the elderly; to enhance access to prescription drugs to certain elderly residents of the state; to prescribe the powers and duties of certain state departments and agencies; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Sec. 1. (1) This act shall be known and may be cited as the "elder prescription insurance coverage act".

(2) It is the intent of the legislature that the EPIC program defray the cost of obtaining medically necessary prescription drugs by elderly Michigan residents under the conditions specified in this act.

(3) The elder prescription insurance coverage program is established within the department of community health.

Sec. 2. As used in this act:

(a) "Department" means the department of community health.

(b) "EPIC program" means the elder prescription insurance coverage program created in section 3 or any other state program, federal program, or combination of state programs and federal programs, providing services to the population specified in section 3.

(c) "Federal poverty guidelines" means the poverty guidelines updated annually in the federal register by the United States department of health and human services under authority of 42 U.S.C. 9902(2).

(d) "Household income" means all income received by all persons of a household in a tax year while members of a household.

(e) "Medicaid" means the program for medical assistance established under title XIX of the social security act, chapter 531, 49 Stat. 620, 42 U.S.C. 1396 to 1396f, 1396g-1 to 1396r-6, and 1396r-8 to 1396v, and administered by the department under the social welfare act, 1939 PA 280, MCL 400.1 to 400.119b.

(f) "MEPPS" means the Michigan emergency pharmaceutical program for seniors.

(g) "Michigan resident" means an individual who establishes residence for a period of 3 months in a settled or permanent home or domicile within the state with the intention of remaining in this state. An individual is a resident until the individual establishes a permanent residence outside this state.

(h) "Prescription" and "prescription drug" mean those terms as defined in section 17708 of the public health code, 1978 PA 368, MCL 333.17708.

Sec. 3. (1) The EPIC program shall provide prescription drug coverage, including related supplies as determined by the department in consultation with the advisory committee established in section 7, to each person to whom all of the following apply:

(a) The person is a noninstitutionalized Michigan resident 65 years of age or older.

(b) The person has a household income at or below 200% of the federal poverty guidelines.

(c) The person is not currently a medicaid recipient.

(d) Excluding medicare supplemental insurance or a federal program described in section 9(2), the person is not covered by other insurance that provides prescription drug coverage.

(2) The department shall give initial enrollment priority to applicants who in the 12 months preceding the effective date of this act participated in the MEPPS. A second enrollment priority will be afforded to applicants with annual household incomes up to 150% of the federal poverty guidelines who received a senior prescription tax credit in former section 273 of the income tax act of 1967, 1967 PA 281. Enrollment in the EPIC program for eligible applicants who formerly participated in the MEPPS program shall take effect not later than October 1, 2001. Enrollment in the EPIC program for eligible applicants who formerly received a senior prescription tax credit shall take effect not later than December 1, 2001. Other applicants with incomes up to 200% of the federal poverty guidelines will be enrolled contingent upon available money.

(3) An individual or married couple meeting the basic eligibility criteria established in subsection (1) may apply for enrollment in the EPIC program as follows:

(a) Submit an annual application to the department, or the department's designee, that, at a minimum, attests to the age, residence, and household income of the individual applicant or couple, if married. A nonrefundable administrative fee must be included with the application. The administrative fee is \$25.00.

(b) Upon notification of eligibility, the enrollee may access the EPIC program by meeting the cost-sharing obligation through a copayment on each prescription that does not exceed 20% of the cost of the prescription being purchased, with a maximum monthly copayment amount calculated based on 1 of the following:

(i) If the applicant's household income is at or below 100% of the federal poverty guidelines, the monthly copayment is 1/12 of 1% of household income as established during the annual application process.

(ii) If the applicant's household income is at or below 125% but greater than 100% of the federal poverty guidelines, the monthly copayment is 1/12 of 2% of household income as established during the annual application process.

(iii) If the applicant's household income is at or below 150% but greater than 125% of the federal poverty guidelines, the monthly copayment is 1/12 of 3% of household income as established during the annual application process.

(iv) If the applicant's household income is at or below 175% but greater than 150% of the federal poverty guidelines, the monthly copayment is 1/12 of 4% of household income as established during the annual application process.

(v) If the applicant's household income is at or below 200% but greater than 175% of the federal poverty guidelines, the monthly copayment is 1/12 of 5% of household income as established during the annual application process.

(4) Subsequent to enrollment in the EPIC program, an applicant who has a household income at or below 100% of the federal poverty guidelines shall be referred to the local family independence agency for assessment of eligibility for medicaid. Nothing in this subsection shall be construed as mandating that an applicant found eligible for medicaid must enroll in that program in lieu of enrollment in the EPIC program.

Sec. 4. (1) The department shall establish an expedited enrollment process or provide an emergency voucher if an otherwise eligible EPIC applicant immediately needs to obtain a medically necessary prescription.

(2) The department shall give an applicant enrolled under subsection (1) a temporary EPIC program eligibility card or an emergency voucher that is valid for up to 90 days from the issue date.

(3) Eligibility requirements for emergency vouchers shall not be more restrictive than the requirements established for the Michigan emergency pharmaceutical program for seniors previously funded in the annual appropriation for the department.

Sec. 5. Except as otherwise specified in this section, if an enrollee chooses to have a prescription filled with a brand name drug when a recognized generic drug is available, a copayment is required. For the initial year of operation, the copayment amount is \$15.00. For subsequent years, the amount of a copayment applied under this section may be established by the legislature. Nothing in this section shall be construed as allowing therapeutic substitution. The department shall develop a mechanism, with the advice of the advisory committee established in section 7, that will specify when drugs should be dispensed as written and not subject to the \$15.00 copayment. These recommendations

shall be presented to the senate and house of representatives appropriations committees not later than September 1, 2001.

Sec. 6. In providing program benefits, the department may do all of the following:

(a) Enter into a contract with a private individual, corporation, or agency to manage the EPIC program. A contract entered into under this subdivision shall be awarded through a competitive bidding process.

(b) Use procedures and rebate amounts specified under section 1927 of title XIX of the social security act, 42 U.S.C. 1396r-8, to secure quarterly rebates from pharmaceutical manufacturers for outpatient drugs dispensed to participants in EPIC.

(c) For products distributed by the pharmaceutical manufacturers not providing quarterly rebates as listed in subdivision (b), require preauthorization.

Sec. 7. (1) To assist in implementing this act, the department may utilize the office of services to the aging, area agencies on aging, senior citizens centers, or other senior focused entities, to provide outreach, enrollment assistance, and education services to potentially eligible seniors for both the EPIC and medicaid programs.

(2) To assist in determining the coverage appropriate under the provisions of this act, the department shall establish an advisory committee. The committee shall consist of consumer representatives, members with knowledge in the areas of pharmacology, geriatrics, development and review of budgetary issues and practice, and policy development, and 1 member of each appropriations committee, or his or her designee, as appointed by the respective chairpersons of the senate and house of representatives appropriations committees. The advisory committee shall meet at least once each year.

Sec. 8. The department shall provide quarterly reports to the senate and house appropriations committees, and the senate and house fiscal agencies, that include quantified data as to the number of program applicants and enrollees, the amount of expenditures, and the number of enrollees subsequently found eligible for medicaid. Each report shall also contain an estimate of whether or not the current rate of expenditures will exceed the existing amount of money appropriated for the EPIC program in the current fiscal year. If the estimate indicates that the program would end the year in deficit, the department and the department of management and budget shall take 1 or more of the following actions:

(a) Request a supplemental appropriation for the EPIC program.

(b) Request a transfer of spending authority from any surplus appropriation within the department.

(c) Suspend further enrollment in the EPIC program.

(d) Increase copayments for new applicants. In no case shall an adjustment in program cost sharing result in a cost to an eligible senior in excess of 5% of the eligible senior's household income.

Sec. 9. (1) The program created by this act is not an entitlement. Benefits are limited to the level supported by the money explicitly appropriated in this or other acts for the EPIC program.

(2) Except as allowed in section 3(4), the EPIC program is a payer of last resort. If the federal government establishes a pharmaceutical assistance program that covers EPIC eligible seniors under medicare or another program, the EPIC program shall cover only eligible costs not covered by the federal program. This subsection does not require payment by a local prescription drug discount program or a local emergency prescription drug assistance program for a prescription drug covered under the EPIC program.

(3) The EPIC program shall utilize an automated pharmacy claims adjudication and prospective drug utilization review system. This automated system shall contain those edits necessary to reduce the risk of adverse drug reactions in the enrolled population.

(4) The pharmacy dispensing fee payable under the EPIC program shall be equal to the current medicaid dispensing fee.

Enacting section 1. Section 273 of the income tax act of 1967, 1967 PA 281, MCL 206.273, is repealed effective December 31 of the year in which the EPIC program is implemented. It is the intent of the legislature that an individual who has expenses for prescription drugs that qualify for a credit under section 273 of the income tax act of 1967, 1967 PA 281, MCL 206.273, on or after January 1 and before December 31 of the year in which the EPIC program is implemented, shall be allowed to claim the credit based on those expenses for that period. In addition, the MEPPS program shall continue until the EPIC program is fully operational.

Enacting section 2. This act takes effect October 1, 2001.

Enacting section 3. Section 1695 of 2000 PA 296 is repealed.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate.

Jay E. Randall

Clerk of the House of Representatives.

Approved

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Governor.