

**House Bill 4323 as introduced
First Analysis (3-19-97)**

**Sponsor: Rep. Clark Harder
Committee: Senior Citizens and Veterans
Affairs**

THE APPARENT PROBLEM:

Public Act 516 of 1988 created a prescription drug credit against the state income tax for low-income senior citizens. People over 65 whose income does not exceed 150 percent of the federal poverty income standards can claim a credit equal to the amount by which their expenditures for prescription drugs exceed five percent of their household income; there is a limit of \$600 per credit. The credit must be claimed on a separate form that must be filed by June 1 in the year after that for which the credit is being claimed. The act stipulates that the amount of credit refunded cannot exceed \$20 million minus the amount spent for the Older Michigianians Pharmaceutical Assistance Fund. (This fund is cited in the Income Tax Act but was never established anywhere in statute.) An earlier attempt to help seniors defray the cost of prescription drugs, House Bill 4141 of the 1987-88, was vetoed by Governor Blanchard on the grounds that there was no identified funding source for it. The bill would have provided direct assistance upon application rather than a credit. The Blanchard Administration subsequently recommended increasing railroad and tobacco taxes to pay for such a program, but this approach was opposed by the affected industries and did not get sufficient support. Late in 1988, the legislature approved a bill that was estimated to increase the tax liability of construction contractors by at least \$20 million annually, basically ratifying a compromise solution of a long-standing dispute between contractors and the treasury department over how to calculate use taxes. This revenue increase from Public Act 506 of 1988 was identified as a likely source of funding for a senior citizen prescription drug tax credit proposal. Although the construction use tax and the prescription drug credit were conceptually linked, there is no formal statutory linkage between the two.

Reportedly, in fiscal year 1989-90, \$9.5 million in prescription drug tax credits were paid out for the 1989 tax year, while in the 1990-91 fiscal year, \$11.7 million in tax credits were paid out for the 1990 tax year. In addition, beginning in fiscal year 1989-90, the legislature began appropriating \$2 million a year for an emergency pharmaceutical program for seniors (the Michigan Emergency Pharmaceutical Program for

Seniors, or MEPPS, was established by rule, and is not in statute), so that in these two fiscal years total expenditures for senior prescription drug assistance programs came to \$11.5 million and \$13.7 million, respectively. By 1995, according to the House Fiscal Agency, the amount refunded under the tax credit program came to \$16 million.

Advocates of the senior drug programs maintain that the full \$20 million should be available each year, and that amounts unspent should not go into the general fund to be used for other purposes but should be saved for future use. This, they say, was the intent when the original legislation was enacted.

THE CONTENT OF THE BILL:

The bill would amend the Older Michigianians Act (MCL 400.5861) to establish the Older Michigianians Pharmaceutical Assistance Fund, which would be housed in the Department of Treasury but be administered by the Office of Services to the Aging in the Department of Management and Budget. The state treasurer would credit to the fund all amounts appropriated by the Income Tax Act and money contributed from any other source. Any money remaining in the fund, including interest earned by the fund, at the end of a fiscal year would be carried over to the next and succeeding fiscal years and would not be credited to or revert to the general fund. The Office of Services to the Aging would have to use the fund to establish a program to assist older persons with payment for prescription drugs, and the office would have to promulgate rules to implement the program.

The bill would define "prescription drug" as that term is defined in the Public Health Code (drugs dispensed according to a prescription, those designated by the Board of Pharmacy as only dispensable with a prescription, and those that bear the federal legend "CAUTION: federal law prohibits dispensing without prescription"), and for purposes of the bill, also would include insulin, syringes, and needles.

Tie-bar. The bill would not take effect unless House Bill 4322, which would appropriate \$20 million a year (minus any tax credits for the preceding fiscal year), took effect.

BACKGROUND INFORMATION:

Prescription drug credit. In 1996, the federal poverty income level for one person was \$11,610; for married couples, \$15,540. The person also must not be a resident of a licensed health care facility (including nursing homes, hospital long-term care units, county medical facilities, and mental health facilities), though otherwise eligible people who live in subsidized senior citizen apartments, adult foster care homes, or licensed homes for the aged are eligible to apply for the credit. The maximum credit allowed for one person is \$600; for eligible married people (that is, who both are at least 65 years old and meet the income requirements), \$1,200. The credit claim form is separate from the state income tax form, and must be filed by June 1 immediately following the year for which the credit is claimed.

Legislative history. Attempts to establish and fund some kind of state-funded prescription drug program for low-income senior citizens goes back more than ten years.

** House Bill 5200 of 1985 would have established the "Older Person's Prescription Drug Coverage Program" in the Office of Services to the Aging to be paid from Medicaid overpayments, including recovery of third-party reimbursements owed to children from insured but absent parents. The bill passed the House but died in the Senate Committee on Senior Citizens and Social Services.

** House Bill 4141 of 1987 would have established an "Older Person's Prescription Drug Coverage Program" in the Office of Services to the Aging with costs to be offset by savings in the Medicaid program due to reduced hospitalizations for drug-induced problems. The bill passed the legislature but was vetoed by the governor.

** House Bill 5659 of 1987 would have created an "Older Person's Prescription Drug Coverage Program" in the Office of Services to the Aging, to be paid for by the repeal of the railroad property tax credit and taxes on smokeless, pipe, and bulk tobacco and on cigars. The bill passed the House but died in the Senate Appropriations Committee.

** Public Act 506 of 1988 increased the use tax on construction contractors with the "understanding" that this revenue would support the \$20 million "Older Michiganians Pharmaceutical Assistance Fund" mentioned in Public Act 516 of 1988.

** Public Act 516 of 1988 created the prescription drug tax credit for senior citizens.

** House Bill 4400 of 1991 would have created a three-year trial Older Person's Prescription Drug Coverage Program to provide some people age 62 and older with help in buying prescription drugs. The bill passed the House but died in the Senate Committee on Mental Health, Human Resources, and Senior Citizens.

** House Bill 4399 of 1991 would have appropriated to the fund proposed in House Bill 4040 \$20 million a year. The bill passed the House but was defeated (twice) on Senate floor.

** House Bill 4012 of 1993 would have appropriated income tax credit money to the Senior Citizens Pharmaceutical Fund created by House Bill 4103. The bill passed the House but died in the Senate Committee on Finance.

** House Bill 4013 of 1993 would have created the Older Michiganians Pharmaceutical Assistance Fund. The bill passed the House but died in the Senate committee on Health Policy.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the fiscal implications to the state are indeterminate and would depend on the amount of money remaining in the fund at the end of a fiscal year, as opposed to reverting to the general fund and being made available for other programs. (3-7-97)

ARGUMENTS:

For:

The bill would ensure that the revenues promised for the funding of the senior citizen prescription drug tax credit program would be used for their intended purpose, and not siphoned off for other purposes. While it is true that the senior prescription drug tax credit has not yet reached the \$20 million annual ceiling, as more people have become aware of the program it has grown and no doubt will continue to grow with the continued aging of the "baby boomers." Since, in order to obtain the credit, seniors must file a separate form with the Department of Treasury, this means that seniors both must know of its availability in the first place and then that they overcome any reticence regarding applying for special benefits. The existence of the emergency senior prescription drug fund emphasizes the existing need for such assistance, for it is used to help people who cannot afford to pay for needed prescription drugs in the first place, and thus for whom, obviously, assistance through a tax credit refund for money already expended is not available.

The senior citizen prescription drug assistance programs were created in the first place because seniors rely on prescription drugs more than other segments of the population and because many low-income seniors not eligible for Medicaid must choose between purchasing the drugs they need and other necessities, including food. For example, advocates cite a study indicating that 15 to 20 percent of the elderly forgo needed medications because they can't afford them. Older people who do not take their prescribed medications often see their health deteriorate and sometimes need to be hospitalized as a result. Currently, although money for the tax credits has apparently been offset by the increase in the contractors' use tax, there is no statutory link between the use tax and the drug program, merely an understanding of sorts that "here is some new revenue, so we can afford this new program." The bill would create in statute for the first time the pharmaceutical fund that has been in existence, through annual appropriations, since 1989, thereby statutorily dedicating revenue for the prescription drug program.

Against:

The Office of Services to the Aging does not believe that legislation is necessary, since the appropriations process is sufficient. Moreover, this year the executive office has requested the carryover that the proposed legislation would establish.

Response:

By placing the fund in statute, the bill would protect the program and its funding from legislative or executive whim, while at the same time continuing to make the fund dependent on the appropriations process.

Against:

At a time of scarce revenues and tough budget decisions, it is bad policy to stockpile current unused revenues for use in future years. The senior prescription drug programs carry a \$20 million cap, not a guarantee that they will get \$20 million every year regardless of need. Thus far, the difference between the amount spent on the prescription drug assistance programs and the cap has stayed in the general fund, where it can be used for other purposes. There are a great many demands on the state budget, many needs to be met. It makes no sense to take money from the general fund for use in future years by one program when there are so many other good uses to which it could be put.

POSITIONS:

The Office of Services to the Aging (in the Department of Management and Budget) neither supports nor opposes the bill. (3-12-97)

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