A bill for an act

relating to human services; requiring the commissioner of human services to establish and administer a universal prescription drug program and prescription drug bulk purchasing program; establishing a dedicated fund; appropriating money from the dedicated fund to the commissioner; requiring mandated reports; proposing coding for new law as Minnesota Statutes, chapter 256N.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. **[256N.01] UNIVERSAL PRESCRIPTION DRUG PROGRAM.**

Subdivision 1. **Establishment; administration.** By July 1, 2010, the commissioner shall establish and administer the universal prescription drug program.

Subd. 2. **Prohibition.** After full implementation of the universal prescription drug program, no health plan, as defined in section 62Q.01, subdivision 3, that includes coverage for prescription drugs, may provide coverage for prescription drugs in the state if such coverage would duplicate the services provided by the universal prescription drug program. Nothing in this chapter precludes a health plan company from offering optional supplementary coverage for brand-name prescription drugs.

Subd. 3. **Prescription drug bulk purchasing.** (a) By July 1, 2010, the commissioner shall provide prescription drugs to all Minnesota residents, regardless of income, and with no co-pays.

(b) By July 1, 2010, the commissioner shall establish and administer a prescription drug bulk purchasing program to provide drugs purchased through the program to residents through participating pharmacies. To administer the bulk purchasing program the commissioner shall:

(1) negotiate the prices of all prescription drugs purchased under the program unless purchased as part of a regional bulk purchasing consortium under clause (2); and

(2) work with other interested states, and enter into agreements with one or more states, to expand bulk purchasing into a regional bulk purchasing consortium.

(c) By January 1, 2009, the commissioner shall present an implementation plan under the mandated reporting requirements in section 3.195, including any draft legislation needed to implement prescription drug bulk purchasing under this chapter by July 1, 2010. The implementation plan must include recommendations for program changes necessary to increase savings to units of state government, Minnesota residents, and participating pharmacies, or to reduce administrative costs.

Subd. 4. **Definitions.** For purposes of this chapter, the following terms have the meanings given them.

(a) "Commissioner" means the commissioner of human services.

(b) "Covered prescription drug" means a prescription drug as defined in section 151.44, paragraph (d), that is listed in the Medicaid drug formulary as described in section 256B.0625, subdivision 13, and is provided by the universal prescription drug program under this section. Only generic prescription drugs, where available, are covered prescription drugs, except where the provider indicates that the generic drug has been tried and failed.

(c) "Health plan company" means any of the following:

(1) an insurance company licensed under chapter 60A to offer, sell, or issue an individual or group policy of accident and sickness insurance as defined in section 62A.01;

(2) a nonprofit health service plan corporation operating under chapter 62C;

(3) a health maintenance organization operating under chapter 62D;

(4) a joint self-insurance employer health plan operating under chapter 62H;

(5) a community integrated service network licensed under chapter 62N;

(6) a fraternal benefit society operating under chapter 64B;

(7) a city, county, school district, or other political subdivision providing self-insured health coverage under sections 471.617 or 471.98 to 471.982; and

(8) a self-funded health plan under the federal Employee Retirement Income Security Act of 1974, as amended.

(d) "Participating pharmacy" means a pharmacy as defined in section 151.01, subdivision 2, that agrees to participate in the prescription drug benefit program.

Subd. 5. **Eligibility.** (a) All permanent Minnesota residents, as defined in section 256L.09, subdivision 4, are presumed eligible for the universal prescription drug program, except to the extent provided under paragraph (b). Eligibility is established by an individual presenting a Minnesota driver's license or state identification card to a participating pharmacy at the point of sale. Unmarried, unemancipated minors must be

deemed to have the residency of the minor's parent or guardian. If a minor's parents are deceased and a legal guardian has not been appointed, or if a minor has been emancipated by court order, the minor shall establish residency by presentation of a Minnesota driver's license or state identification card. The commissioner shall not implement an application process to determine eligibility for the universal prescription drug program, however the commissioner shall establish guidelines to prevent an influx of persons to the state for the purpose of obtaining prescription drug coverage.

(b) In the event federal waivers cannot be obtained under section 256N.02, paragraph (a), clause (2):

(1) an individual is ineligible for the universal prescription drug program who is enrolled in and has prescription drug coverage currently available under a Medicare supplement policy, as defined in sections 62A.31 to 62A.44, or policies, contracts, or certificates that supplement Medicare issued by health maintenance organizations or those policies, contracts, or certificates governed by section 1833 or 1876 of the federal Social Security Act, United States Code, title 42, section 1395, et seq., as amended; and

(2) an individual who is enrolled in a Medicare Part D prescription drug plan or Medicare Advantage plan is eligible for the program but only for drugs that are not covered under either plan. For drugs that are covered under the Medicare Part D plan or Minnesota Advantage plan, but according to the conditions of the plan, the individual is responsible for 100 percent of the cost of the prescription drug.

Subd. 6. **Participating pharmacy.** (a) Upon implementation of the prescription drug bulk purchasing program under subdivision 3, a participating pharmacy, with a valid prescription, shall provide a covered prescription drug to an individual eligible under subdivision 5.

(b) Each participating pharmacy shall provide the commissioner with all information necessary to administer the program, including, but not limited to, information on prescription drug sales to individuals and usual and customary retail prices.

Subd. 7. **Payment to pharmacies.** Upon implementation of the universal prescription drug program under this chapter, the commissioner shall distribute to participating pharmacies on a biweekly basis:

(1) a reasonable switch fee that covers expenses incurred by participating pharmacies in formatting for electronic claims for prescription drugs provided to enrolled individuals;

(2) a reasonable dispensing fee that covers expenses incurred by participating pharmacies related to the sale of drugs to the enrolled individuals; and

(3) a usual and customary retail profit margin.

Subd. 8. **Enrollment premiums.** The commissioner shall establish an annual sliding scale enrollment premium as described under section 256N.04.

Subd. 9. **Dedicated fund; creation; use of fund.** (a) The universal prescription drug program special revenue fund is established as an account in the state treasury. The commissioner of finance shall credit to the fund all premiums paid under subdivision 8, any subrogation claims paid under section 256N.03, any federal funds received for the program, and any appropriations or allocations designated for the fund. The commissioner of finance shall ensure that fund money is invested under section 11A.25. All money earned by the fund must be credited to the fund. The fund must earn a proportionate share of the total state annual investment income.

(b) Money in the fund is appropriated to the commissioner to reimburse participating pharmacies under subdivision 7, to reimburse the commissioner for other reasonable actuarial and administrative costs related to administration of the universal prescription drug program, and to repay the appropriation provided by law for this section. Any excess funds in the fund are to remain in the fund for the purposes of these costs. The commissioner shall administer the program so that the costs total no more than funds appropriated plus the plan premium proceeds.

(c) The purpose of the universal prescription drug program fund is to finance the universal prescription drug program established under this chapter. Money in the fund must be used solely for this purpose. Any transfers from the universal prescription drug program fund that are not directly related to the financing of the universal prescription drug program are prohibited.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 2. **[256N.02] UNIVERSAL PRESCRIPTION DRUG PROGRAM MERGER SCHEDULE.**

(a) The commissioner shall:

(1) by January 1, 2009, present an implementation plan under the mandated reporting requirements in section 3.195, including any draft legislation needed to merge the universal prescription drug program with other state programs which provide duplicative prescription drug coverage, including medical assistance to the extent permitted under federal law, and retirees with retiree prescription drug benefits. The merger shall be fully implemented by July 1, 2010, and done in a way that will not diminish the coverage provided to participants in existing programs and without increasing the financial obligations of providers that currently serve participants in these programs; and

(2) seek any federal waivers necessary to implement the universal prescription drug program by July 1, 2010, including a pharmacy plus waiver as described in Public Law 110-28, section 7002(c).

(b) The commissioner shall assist persons who are displaced from employment as a result of the initiation of the prescription drug program, including determining the period of time during which assistance must be provided and identifying sources of funds, including dislocated worker program funds and health insurance funds, to support retraining and job placement. Assistance under this paragraph must be provided for a period of up to five years from the date that this section becomes effective.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 3. **[256N.03] SUBROGATION.**

Subdivision 1. **Collateral source.** (a) When all other payers for prescription drug coverage have been terminated, prescription drug costs shall be collected from collateral sources whenever prescription drugs provided to an individual are, or may be, covered services under a policy of insurance, or other collateral source available to that individual, or when the individual has a right of action for compensation permitted under law.

(b) As used in this section, collateral source includes:

(1) insurance policies written by insurers, including the medical components of automobile, homeowners, and other forms of insurance;

(2) pension plans;

(3) employers;

(4) employee benefit contracts;

(5) government benefit programs;

(6) a judgment for damages for personal injury; and

(7) any third party who is or may be liable to an individual for health care services or costs.

(c) Collateral source does not include:

(1) a contract or plan that is subject to federal preemption; or

(2) any governmental unit, agency, or service, to the extent that subrogation is prohibited by law. An entity described in paragraph (b) is not excluded from the obligations imposed by this section by virtue of a contract or relationship with a governmental unit, agency, or service.

(d) The commissioner shall negotiate waivers, seek federal legislation, or make other arrangements to incorporate collateral sources in the state into the universal prescription drug program.

Subd. 2. **Collateral source; negotiation.** Whenever an individual receives prescription drugs under the universal prescription drug program, and is entitled to coverage, reimbursement, indemnity, or other compensation from a collateral source, the individual shall notify the participating pharmacy and provide information identifying the collateral source, the nature and extent of coverage or entitlement, and other relevant information. The participating pharmacy shall forward this information to the commissioner. The individual entitled to coverage, reimbursement, indemnity, or other compensation from a collateral source shall provide additional information as requested by the commissioner.

Subd. 3. **Reimbursement.** (a) The commissioner shall seek reimbursement from the collateral source for services provided to the individual and may institute appropriate action, including legal proceedings, to recover the reimbursement. Upon demand, the collateral source shall pay to the commissioner the sums it would have paid or expended on behalf of the individual for the prescription drugs provided by the universal prescription drug program.

(b) In addition to any other right to recovery provided in this section, the commissioner shall have the same right to recover the reasonable value of benefits from a collateral source as provided under section 256B.37.

(c) If a collateral source is exempt from subrogation or the obligation to reimburse the universal prescription drug program in this section, the commissioner may require that an individual who is entitled to prescription drug coverage from the source first seek those services from that source before seeking those services from the universal prescription drug program.

(d) To the extent permitted by federal law, contractual retiree prescription drug benefits provided by employers shall be subject to the same subrogation as other contracts, allowing the universal prescription drug program to recover the cost of services provided to individuals covered by the retiree benefits, unless and until arrangements are made to transfer the revenues of the benefits directly to the universal prescription drug program.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 4. **[256N.04] UNIVERSAL PRESCRIPTION DRUG PREMIUMS.**

Subdivision 1. **Duties.** The commissioner shall:

(1) determine the aggregate costs of providing prescription drug coverage under this chapter;

(2) develop an equitable and affordable premium structure that is progressive and based on the ability to pay and that will generate adequate revenue for the fund for prescription drugs;

(3) in consultation with the Department of Revenue, develop an efficient means of collecting premiums;

(4) ensure that all income earners and all employers contribute a premium amount that is affordable; and

(5) coordinate with existing, ongoing funding sources from federal and state programs.

Subd. 2. **Report.** By January 1, 2009, the commissioner shall submit to the legislature under the mandated reporting requirements in section 3.195, a detailed description of the methodology for collecting sufficient revenue to finance the universal prescription drug program described in this chapter. The commissioner shall begin collecting the revenue according to this methodology on July 1, 2010.

EFFECTIVE DATE. This section is effective the day following final enactment.