

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 538 of the Regular Session

1 State of Arkansas *As Engrossed: H2/2/05 H2/4/05 H2/11/05 H2/16/05 S2/22/05*

2 85th General Assembly

A Bill

3 Regular Session, 2005

HOUSE BILL 1241

4

5 By: Representatives McDaniel, Medley, Bradford, J. Johnson, Thyer, Dunn, Borhauer, Davis, Edwards,
6 Flowers, Kidd, J. Martin, Ragland, L. Smith, Thompson, Wills, *Abernathy, Bolin, Bond, Boyd, Clemons,*
7 *Cook, Cooper, D. Creekmore, Dickinson, Everett, George, R. Green, Hardy, Harrelson, Jeffrey, D.*
8 *Johnson, Ledbetter, Mack, Pate, Petrus, Saunders, Walters, Wells*

9 By: *Senator J. Bookout*

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For An Act To Be Entitled

13

AN ACT TO ESTABLISH THE ARKANSAS RX PROGRAM; AND

14

FOR OTHER PURPOSES.

15

16

Subtitle

17

AN ACT TO ESTABLISH THE ARKANSAS RX

18

PROGRAM.

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20

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

22

23 SECTION 1. Arkansas Code Title 20, Chapter 76 is amended to add an
24 additional subchapter to read as follows:

25 20-76-501. Findings.

26 The General Assembly finds that:

27 (1) Affordability is critical in providing access to

28 prescription drugs for Arkansas residents;

29 (2) The state should take steps to:

30 (A) Make prescription drugs more affordable for qualified

31 Arkansas residents; and

32 (B) Integrate the program as part of any statewide program

33 for the uninsured;

34 (3) The state should not:

35 (A) Discourage employers from offering or paying for



1 prescription drug benefits for their employees; or

2 (B) Replace employer-sponsored prescription drug benefit
3 plans that provide benefits comparable to those made available to qualified
4 Arkansas residents under this subchapter; and

5 (4) A statewide drug price reduction program will increase the
6 overall health of Arkansas residents, promoting healthy communities, and
7 protecting the public health and welfare.

8
9 20-76-502. Definitions.

10 As used in this subchapter:

11 (1) "Average wholesale price" means the wholesale price charged
12 on a specific drug that is assigned by the drug manufacturer and is listed in
13 a nationally recognized drug pricing file;

14 (2) "Covered drugs" means drugs that are on the Arkansas Rx
15 Program preferred drug list;

16 (3) "Director" means the Director of the Department of Human
17 Services or his or her designee;

18 (4) "Labeler" means a person or entity that:

19 (A) Receives prescription drugs from a manufacturer or
20 wholesaler and repackages those drugs for later retail sale; and

21 (B) Has a labeler code from the federal Food and Drug
22 Administration under 21 C.F.R. § 207.20, as in effect January 1, 2005;

23 (5) "Participating retail pharmacy" means a participant in the
24 Arkansas Rx Program that is:

25 (A)(i) A retail pharmacy located in this state; or

26 (ii) Another business licensed to dispense prescription
27 drugs in this state.

28 (B) "Participating retail pharmacy" does not mean a mail-
29 order pharmacy;

30 (6) "Preferred drug list" means a list of:

31 (A) Drugs listed as preferred drugs by the Arkansas Medicaid
32 Evidence Based Preferred Drug Program for which a rebate is in effect under the
33 Arkansas RX program; and

34 (B) Drugs that are within pharmaceutical classifications
35 having no listed preferred drug under the Arkansas Medicaid Evidence Based
36 Preferred Drug Program for which a rebate is in effect under the Arkansas RX

1 program; and

2 (7) "Qualified resident" means a resident of the state who:

3 (A) Is not otherwise enrolled in or covered by any
4 prescription drug benefit or insurance plan, including Medicaid and Medicare
5 Part D;

6 (B) Is enrolled in the program; and

7 (C)(i) Is sixty-five (65) years of age or older; or
8 (ii) Has a family income equal to or less than three
9 hundred fifty percent (350%) of the federal poverty level;

10
11 20-76-503. Program established.

12 (a) Subject to the available funding, the Arkansas Rx Program is
13 established to reduce prescription drug prices and to improve the quality of
14 health care for residents of the state.

15 (b)(1) Subject to the available funding, the Department of Human
16 Services shall administer the program.

17 (2) The department shall use manufacturer rebates and pharmacy
18 discounts to reduce prescription drug prices.

19 (c) The department shall promulgate rules to implement the provisions
20 of this chapter.

21 (d) The department shall seek any waivers of federal law, rule, or
22 regulation necessary to implement the provisions of this subchapter.

23
24 20-76-504. Rebate agreement.

25 (a) Every drug manufacturer or labeler that sells prescription drugs
26 in this state through any publicly supported pharmaceutical assistance
27 program shall enter into a rebate agreement with the Department of Human
28 Services for participation in the Arkansas Rx Program.

29 (b) The rebate agreement shall require the manufacturer or labeler to
30 make rebate payments to the state each calendar quarter or according to a
31 schedule established by the department.

32 (c)(1) A penalty of ten percent (10%) of the total rebate amount shall
33 be assessed for any rebate not paid by the manufacturer or labeler in
34 accordance with subsection (b) of this section or pursuant to terms
35 established by the Director of the Department of Human Services.

36 (2) An additional penalty of five percent (5%) of the total

1 delinquent amount shall be assessed each quarter that delinquent rebates
2 remain unpaid to the state.

3 (d) The director of his or her designee may file suit in Pulaski
4 County Circuit Court to enforce rebate agreements and to collect delinquent
5 rebates and penalties.

6
7 20-76-505. Rebate amount.

8 (a) The Director of the Department of Human Services shall negotiate
9 the amount of the rebate required from a manufacturer or labeler in
10 accordance with this section.

11 (b) The director shall take into consideration:

12 (1) The rebate calculated under the Medicaid rebate program
13 under 42 U.S.C. § 1396r-8;

14 (2) The average wholesale price of prescription drugs; and

15 (3) Any other available information on prescription drug prices
16 and price discounts.

17 (c) The director shall use his or her best efforts to obtain an
18 initial rebate amount equal to or greater than the rebate calculated under
19 the Medicaid rebate program under 42 U.S.C. § 1396r-8.

20 (d) To assist with the rebate program under this subchapter, the
21 director shall use his or her best efforts to obtain a rebate equal to or
22 greater than the amount of price reduction for prescription drugs provided to
23 the United States government.

24
25 20-76-506. Discounted prices for qualified residents.

26 Each participating retail pharmacy shall sell covered drugs to
27 qualified residents at the ordinary and customary retail price less any
28 applicable rebate established under this subchapter.

29
30 20-76-507. Operation of program.

31 (a) Participating retail pharmacies shall disclose to qualified
32 residents the amount of savings provided as a result of the Arkansas Rx
33 Program.

34 (b) The Department of Human Services may not impose transaction
35 charges under the Arkansas Rx Program on participating retail pharmacies that
36 submit claims or receive payments under the program.

1 (c) A participating retail pharmacy shall submit claims to the
2 department in order to determine the appropriate rebates.

3 (d) On a biweekly basis, the department shall reimburse a
4 participating retail pharmacy for the applicable rebate provided to qualified
5 residents under § 20-76-506.

6 (e) The department shall conduct ongoing quality assurance activities
7 as needed at the discretion of the director.

8
9 20-76-508. Action with regard to nonparticipating manufacturers and
10 labelers.

11 (a) The names of manufacturers and labelers are public information
12 without regard to whether they enter into rebate agreements under this
13 subchapter.

14 (b) The Department of Human Services shall:

15 (1) Release the names of manufacturers and labelers to health
16 care providers and the public on a regular basis; and

17 (2) Publicize participation by manufacturers and labelers that
18 is of particular benefit to the public.

19
20 20-76-509. Arkansas Rx Program Fund.

21 (a) There is created on the books of the Treasurer of State, Auditor
22 of State, and Chief Fiscal Officer of the State a special revenue fund to be
23 known as the "Arkansas Rx Program Fund".

24 (b)(1) All moneys collected under the Arkansas Rx Program Fund shall
25 be deposited into the State Treasury to the credit of the fund as special
26 revenues.

27 (2) The fund shall also consist of any other revenues as may be
28 authorized by law.

29 (c) The fund shall be used by the Department of Human Services to
30 reimburse:

31 (1) Retail pharmacies for rebates provided under this
32 subchapter; and

33 (2) The department for contracted services including pharmacy
34 claims processing fees, administrative and associated computer costs, and
35 other reasonable program costs.

36 (d) Surplus funds in the fund shall be used for the benefit of the

1 program.

2
3 20-76-510. Annual summary report.

4 The Department of Human Services shall report the enrollment and
5 financial status of the program to the Legislative Council by October 1 each
6 year.

7
8 20-76-511. Obligations of department.

9 (a) The Department of Human Services shall:

10 (1) Establish simplified procedures for determining eligibility
11 and issuing Arkansas Rx Program enrollment cards to qualified residents; and

12 (2) Undertake outreach efforts to:

13 (A) Build public awareness of the program; and

14 (B) Maximize enrollment of qualified residents.

15 (b) The department may adjust the requirements and terms of the
16 program to accommodate any new federally funded prescription drug programs.

17
18 20-76-512. Medical assistance programs.

19 (a) The Department of Human Services shall administer the Arkansas Rx
20 Program in a manner that is advantageous to the program and to the enrollees
21 in the program.

22 (b) In implementing this subchapter the department may:

23 (1) Coordinate other programs of the department with this
24 program; and

25 (2) Provide the benefits of this program to enrollees in other
26 programs of the department.

27 20-76-513. Rules.

28 The department may promulgate such reasonable rules as may be necessary
29 or beneficial to the Arkansas Rx Program.

30
31 20-76-513. Implementation.

32 The Department of Human Services shall begin offering Arkansas Rx
33 Program drug benefits under this subchapter on February 1, 2006 and shall
34 immediately make all best efforts to:

35 (1) Enroll eligible participants;

36 (2) Publicize and promote the Arkansas Rx Program;

- 1 (3) Negotiate rebates with manufacturers;
- 2 (4) Enroll participating pharmacies; and
- 3 (5) Promulgate all rules necessary to administer the Arkansas Rx
- 4 Program.

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6 20-27-514. Fee.

7 Participating residents shall pay a twenty-five dollars (\$25.00) fee annually

8 in order to participate in the program.

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10 /s/ McDaniel

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13 APPROVED: 3/03/2005

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