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.

State of Arkansas
83rd General Assembly
Regular Session, 2001

A Bill

HOUSE BILL 1145

By: Representative Trammell

For An Act To Be Entitled

AN ACT TO ESTABLISH FAIRER PRICING FOR PRESCRIPTION DRUGS; AND FOR OTHER PURPOSES.

Subtitle

AN ACT TO ESTABLISH FAIRER PRICING FOR PRESCRIPTION DRUGS.

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

SECTION 1. Short title.

This act shall be known and may be cited as the "Arkansas Prescription Drug Fair Pricing Act."

SECTION 2. Definitions.

For the purpose of this act “board” means the Fair Drug Pricing Board created by this act.

SECTION 3. Fair Drug Pricing Board.

(a) There is established the “Fair Drug Pricing Board”.

(b)(1) The board shall consist of nine (9) members who must be residents of this state and be at least twenty-one (21) years of age.

(2) The appointments shall be made as follows:

(A) One (1) member of the public appointed by the President Pro Tempore of the Senate;

(B) One (1) member of the public appointed by the Speaker of the House;

(C) One (1) member of the public appointed by the Governor

representing the interests of senior citizens;

(D) One (1) member of the public appointed by the Governor representing the interests of disabled citizens;

(E) One (1) member of the public appointed by the Governor representing the interests of low-income citizens;

(F) Two (2) members of the medical community representing the interests of senior citizens, one (1) of whom must be a member from the nursing community, appointed by the Governor; and

(G) Two (2) pharmacists, appointed by the Governor.

(3) All initial appointments to the board must be made no later than August 15, 2001.

(c)(1) Members of the board serve for terms of three (3) years and may be reappointed.

(2) The terms of the initial members of the board shall be determined by lot so that the term of three (3) members expire each year.

(3) Vacancies shall be filled by the appointing officer for the unexpired term.

(4) Board members shall serve until their successors have been appointed and qualified.

(d)(1) The board shall annually elect a chairperson from its membership.

(2) The Governor shall designate a member who shall be responsible for calling the first meeting and presiding at the first meeting until a chairperson is elected.

(e) A majority of the board shall constitute a quorum for transacting business.

(f)(1) The board shall meet at least once each month.

(2) The first meeting of the board shall be held by September 1, 2001.

(g) Each member of the board may receive expense reimbursement in accordance with Arkansas Code 25-16-901 and stipends in accordance with Arkansas Code 25-16-903.

SECTION 4. Director.

(a) The board shall appoint a director who shall perform the duties delegated by the board.

(b) The director shall hire the necessary staff to carry out the provisions of this act.

SECTION 5. Prescription drug pricing.

(a) Beginning in 2002 the board shall annually adopt rules establishing the maximum prices for prescription drugs. The board shall adopt the rules by January 15 of each year.

(b)(1)(A) The board shall establish the price schedule of maximum manufacturer prices for prescription drugs sold in the state after consideration of the prices charged for prescription drugs in Canada and Mexico, the prices listed on the federal supply schedule for pharmaceuticals and drugs maintained by the United States Department of Veterans Affairs and any other relevant information.

(B) Unless the board determines that a higher maximum price should be allowed:

(i) The maximum manufacturer price of a prescription drug should not exceed the manufacturer price for that drug sold in Canada or Mexico, whichever is lower; and

(ii) If a prescription drug is not sold in Canada or Mexico, the maximum manufacturer price should not exceed the maximum price for all other prescription drugs within the same classification of drugs.

(2) The maximum wholesaler price for a prescription drug sold in the state by a wholesaler is the maximum manufacturer price under subdivision (b)(1) plus any reasonable and customary cost of doing business and profit markup by the wholesaler, as determined by the wholesaler, as long as that wholesale price does not constitute a deceptive and unconscionable trade practice under Arkansas Code 4-88-107.

(3) The maximum retailer price for a prescription drug sold in the state by a retailer is the maximum wholesaler price under subdivision (b)(2), plus any usual and customary cost of doing business and profit markup by the retailer, as determined by the retailer, as long as that retail price does not constitute a deceptive and unconscionable trade practice under Arkansas Code 4-88-107.

(c) The maximum prices for prescription drugs established under this section take effect on October 1st of the same year in which the prices are established, unless by September 1st of that same year the board determines,

after a public hearing, that prescription drug prices are less than or equal to the maximum prices set pursuant to this section or that alternative, nonregulatory mechanisms have been implemented to ensure that prescription drugs are sold in this state at prices that do not exceed the maximum prices established pursuant to this section.

(d) The provisions of this section establishing maximum prices for prescription drugs do not apply to prices subject to legally binding contracts entered into before the effective date of this act.

SECTION 6. Prescription drug survey.

(a) The board, to assist in the development of maximum drug prices and the determinations required pursuant to section 4 of this act, shall conduct a semiannual survey of prescription drugs.

(b) The survey must include the following information:

(1) Current manufacturer, wholesaler and retailer maximum prices of prescription drugs in the state, as set by the board;

(2) Manufacturer, wholesaler and retailer maximum prices for prescription drugs for the previous five (5) years at six (6) month intervals;

(3) The federal supply schedule for pharmaceuticals and drugs maintained by the United States Department of Veterans Affairs;

(4) The drug formulary maintained by the Province of Quebec, by other provinces in Canada, and by Mexico or its states; and

(5) Any other information concerning prescription drug prices in the state that the board considers appropriate.

(c) Semiannually, the board shall provide copies of the results of the survey performed pursuant to this section to the Governor, the General Assembly, and the Arkansas State Board of Pharmacy.

(d) The board shall maintain a publicly accessible site on the Internet containing the results of the survey conducted pursuant to this section.

SECTION 7. Powers and duties.

(a) In carrying out its duties, the board has all the powers necessary to carry out the purposes of this act, including, but not limited to:

(1) The power to adopt rules, in accordance with the Administrative Procedure Act, beginning at Arkansas Code 25-15-201; and

(2) The power to collect from any manufacturer, wholesaler, or

retailer of prescription drugs sold in Arkansas such information as is necessary for the board to carry out its duties under this act; and

(3) The power to explore regional strategies and purchasing alliances to benefit the people of the state.

(b) The board shall report to the Governor and the Legislative Council on the results of efforts to explore regional strategies and purchasing alliances, including making recommendations for entering into such regional strategies.

(c) The following provisions apply with regard to the collection of data, statistics, information, books, accounts and documents by the board pursuant to this section:

(1) A manufacturer, wholesaler or retailer of prescription drugs sold in this state shall file with the board, on request, such data, statistics, schedules or information as the board may require to enable it to carry out its duties.

(2) The board may examine books, accounts and documents of any manufacturer, wholesaler or retailer of prescription drugs sold in this state, subpoena witnesses and documents, administer oaths to witnesses and examine those witnesses and documents on all matters over which the board has jurisdiction; and

(3) For the purpose of supporting fair and effective competition and pricing that reflects actual costs in the market of prescription drugs, the board shall adopt rules for the designation of information collected by the board as public information or as proprietary information that may not be disclosed to any person other than the board and its staff or to the Attorney General for law enforcement purposes.

SECTION 8. Emergency measures.

(a) The board shall draft a plan that includes emergency measures to be implemented in the event that the board determines that there is a severe limitation or shortage of or loss of access to prescription drugs in the state that is threatening or endangering the health or welfare of the public.

(b) If the board determines that such an event is occurring, the board shall provide the Governor with the plan and petition the Governor to implement the emergency measures.

SECTION 9. Appeals.

(a)(1) A manufacturer of prescription drugs may appeal the maximum price of a prescription drug established pursuant to section 4 (b)(1) of this act to the board.

(2) The board may grant an exemption from the board's price schedule on its own initiative or upon appeal of the manufacturer.

(3) If the manufacturer appeals the maximum price, the manufacturer bears the burden of proof in demonstrating the need for an exemption.

(b)(1) Factors to be considered by the board in an appeal include:

(A) Changed circumstances since the price schedule was established;

(B) Reasonable costs of production, distribution, marketing and research;

(C) The profit through sale and the price charged in other markets for the prescription drug;

(D) The availability of prescription drugs essential to the health of the state's citizens, or any other factor related to the health and safety of the state's citizens; and

(E) Other relevant information.

(2) Rulings on appeals by the board shall constitute adjudication for purposes of judicial review under Arkansas Code 25-15-212.

(3) If a manufacturer of prescription drugs appeals a price set by the board, the manufacturer shall fully disclose to the board information regarding the production costs of the drug and any other information pertinent to the appeal requested by the board, notwithstanding any law protecting the manufacturer from having to disclose such information.

(4) The filing of an appeal does not delay the implementation or effective dates of maximum prices imposed by the board.

SECTION 10. Violation of the Deceptive Trade Practices Act.

(a)(1) It is unlawful for a manufacturer, wholesaler, or retailer to sell prescription drugs at a price that exceeds the maximum price allowed under Section 5 of this act.

(2) A violation of this section shall constitute a deceptive and unconscionable trade practice under Arkansas Code 4-88-107.

(b) All remedies, penalties, and authority granted to the Attorney General or other persons under the Deceptive Trade Practices Act, which begins at Arkansas Code 4-88-101, shall be available to the Attorney General or other persons for the enforcement of this act.

(c) Nothing in this section limits the rights or remedies which are otherwise available to a consumer under any other law.

(d) The obligations under this section are cumulative and should in no way be deemed to limit the obligations imposed under any other law.

SECTION 11. Agreements with other entities.

The board may enter into agreements with other states, Canada, and Mexico for the purpose of maintaining fair and uniform prescription drug prices and ensuring maximum access to affordable prescription drugs.

SECTION 12. Patient assistance programs.

Health care providers licensed by the state shall examine the applicability of pharmaceutical manufacturer patient assistance programs and any prescription drug assistance programs provided by the state to the patients of the health care provider and, if those programs would be of assistance to the health care provider's patients, provide appropriate information to the patients with the goal of increasing access to reasonably priced prescription drugs and lowering the cost to the patients.

SECTION 13. EMERGENCY CLAUSE. It is hereby found and determined by the Eighty-third General Assembly that prescription drug costs represent the fastest growing item in health care and are a driving force in rapidly increasing hospital costs and insurance rates; that the citizens of Arkansas and other Americans pay high prices for prescription drugs as compared to the cost in many other countries; that the high prices deny Arkansas citizens access to medically necessary health care and thereby threaten their health and safety; that this act is immediately necessary to ensure the fair pricing of prescription drugs. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which

the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.