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 *As Engrossed: H4/3/03*
84th General Assembly **A Bill**
Regular Session, 2003 HOUSE BILL 2890

By: Representative J. Johnson

For An Act To Be Entitled

THE ARKANSAS PRESCRIPTION DRUG FAIR PRICE ACT; AND FOR OTHER PURPOSES.

Subtitle

THE ARKANSAS PRESCRIPTION DRUG FAIR PRICE ACT.

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

SECTION 1. Arkansas Code Title 20, is amended to add an additional chapter to read as follows:

20-87-101. Title.

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

20-87-102. Findings and purpose.

(a) The General Assembly finds that:

(1) Approximately one (1) in four (4) residents of Arkansas have no or wholly inadequate prescription drug insurance coverage;

(2)(A) These uninsured residents pay excessive prices for prescription drugs, far higher prices than are paid by managed care organizations, insurance companies, and the federal government for the same medicines and dosages.

(B) In many cases, these excessive drug prices have the effect of denying people access to medically necessary care, thereby threatening their health and safety;

(3)(A) Many people require repeated doctor or medical clinic

appointments, having gotten sicker because they cannot afford to take the prescriptions prescribed for them.

(B) Many people are admitted to or treated at hospitals each year because they cannot afford the drugs prescribed for them that could have prevented the need for hospitalization.

(C) Many others enter expensive institutional care settings because they cannot afford their necessary prescription drugs that could have supported them outside of an institution.

(D) In each of these circumstances, state medical assistance programs, including the Medicaid program, literally pay the price;

(4) A major reason uninsured residents pay so much for prescription drugs is that, unlike insured residents, they have no prescription benefits manager negotiating a fair price with the drug companies on their behalf; and

(5)(A) The state government is the only agent that, as a practical matter, can play an effective role as a market participant on behalf of all residents who are uninsured or underinsured.

(B) The state can and should act as a prescription benefit manager, negotiating voluntary drug rebates and using these funds to reimburse retail pharmacies for offering lower drug prices.

(b)(1) This chapter is enacted to create a program whereby the state acts as a participant in the prescription drug marketplace, negotiating voluntary rebates from drug companies and using the funds to make prescription drugs more affordable to Arkansas citizens.

(2) The program will improve public health and welfare, promote the economic strength of our society, and substantially benefit state health assistance programs, including the Medicaid program.

20-87-103. Definitions.

For purposes of this chapter:

(1) "Department" means the Department of Human Services;

(2) "Director" means the Director of the Department of Human Services, or the director's designee;

(3) "Labeler" means an entity or person that receives prescription drugs from a manufacturer or wholesaler and repackages those drugs for later retail sale, and that has a labeler code from the United States Food and Drug

Administration under 21 CFR 207.20 (1999);

(4) "Manufacturer" means a manufacturer of prescription drugs and includes a subsidiary or affiliate of a manufacturer; and

(5) "Retail Pharmacy" means a retail pharmacy or other business licensed to dispense prescription drugs in this state.

20-87-104. Prescription Drug Fair Pricing Program.

(a) There is established the Prescription Drug Fair Pricing Program within the Department of Human Services to lower prescription drug prices for uninsured and underinsured residents of the state.

(b) A drug manufacturer or labeler that sells prescription drugs in the state may voluntarily elect to enter into a rebate agreement with the department.

(c) The Director of the Department of Human Services shall negotiate the terms of the rebate from a manufacturer or labeler, taking into consideration the rebate calculated under the Medicaid Rebate Program pursuant to 42 USC 1396r-8, the average wholesale price of prescription drugs, and any other available information on prescription drug prices and price discounts.

(d)(1) If a drug manufacturer or labeler elects not to agree to a rebate, the director may place the manufacturer's or labeler's products on the prior authorization list for the state Medicaid program, and take similar actions involving prior authorization or formularies for any other state-funded prescription drug program.

(2) The director shall promulgate rules creating clear procedures for the implementation of this section.

(3)(A) The names of manufacturers and labelers that do not enter into rebate agreements are public information and the department shall release the information to the public.

(B) The director shall also publicize to doctors, pharmacists, and other health professionals information about the relative cost of drugs produced by manufacturers and labelers that enter into rebate agreements compared to those who do not enter into rebate agreements.

(e) A retail pharmacy shall discount the price of prescription drugs sold to Prescription Drug Fair Pricing Program participants.

(f) The department shall establish discounted prices for drugs covered

by a rebate agreement and shall promote the use of efficacious and reduced-cost drugs, taking into consideration reduced prices for state and federally capped drug programs, differential dispensing fees, administrative overhead, and incentive payments.

(g)(1) Beginning July 1, 2004, a retail pharmacy shall offer prescription drugs at or below the average wholesale price, minus six percent (6%), plus a dispensing fee designated by the director.

(2) These initial price levels shall be calculated by the director and the dispensing fee shall not be less than that provided under the state Medicaid program.

(3) The average wholesale price is the wholesale price charged on a specific commodity that is assigned by the drug manufacturer and is listed in a nationally recognized drug pricing file.

(h)(1) No later than January 1, 2005, a retail pharmacy shall offer prescription drugs at or below the initial price levels specified in subsection (g) of this section minus the amount of any rebate paid by the state to the retail pharmacy.

(2) These discounted price levels shall be calculated by the director.

(3) In determining the discounted price levels, the director shall consider an average of all rebates weighted by sales of drugs subject to these rebates over the most recent twelve-month period for which the information is available.

(i)(1) All residents of the state are eligible to participate in the Prescription Drug Fair Pricing Program.

(2) The department shall establish simplified procedures for issuing Prescription Drug Fair Pricing Program enrollment cards to eligible residents.

(3) The department shall undertake outreach efforts to build public awareness of the Prescription Drug Fair Pricing Program and maximize enrollment by eligible residents.

(j) The department may not impose transaction charges on retail pharmacies that submit claims or receive payments under the Prescription Drug Fair Pricing Program.

(k) A retail pharmacy shall submit claims to the department to verify the amount charged to Prescription Drug Fair Pricing Program participants.

(l) On a weekly or biweekly basis, the department shall reimburse a retail pharmacy for discounted prices provided to Prescription Drug Fair Pricing Program participants and dispensing fees set by the director.

(m)(1) The department shall collect from the retail pharmacies utilization data necessary to calculate the amount of the rebate from the manufacturer or labeler.

(2) The department shall protect the confidentiality of all information subject to confidentiality protection under state or federal law, rule or regulation.

(n) The department shall promulgate rules to implement this chapter.

(o) The department may seek any waivers of federal law, rule or regulation necessary to implement this chapter.

20-87-105. Discrepancies in rebate amounts.

(a) Discrepancies in rebate amounts must be resolved using the process established in this section.

(b)(1) If there is a discrepancy in the manufacturer's or labeler's favor between the amount claimed by a pharmacy and the amount rebated by the manufacturer or labeler, the Department of Human Services, at the department's expense, may hire a mutually agreed upon independent auditor.

(2) If a discrepancy still exists following the audit, the manufacturer or labeler shall justify the reason for the discrepancy or make payment to the department for any additional amount due.

(c)(1) If there is a discrepancy against the interest of the manufacturer or labeler in the information provided by the department to the manufacturer or labeler regarding the manufacturer's or labeler's rebate, the manufacturer or labeler, at the manufacturer's or labeler's expense, may hire a mutually agreed upon independent auditor to verify the accuracy of the data supplied to the department.

(2) If a discrepancy still exists following the audit, the department shall justify the reason for the discrepancy or refund to the manufacturer any excess payment made by the manufacturer or labeler.

(d)(1) Following the procedures established in subsection (b) or (c), either the department or the manufacturer or labeler may request a hearing.

(2) Supporting documentation shall accompany the request for a hearing.

20-87-106. Annual summary report.

The Department of Human Services shall report the enrollment and financial status of the Prescription Drug Fair Pricing Program to the cochairs of the House and Senate Interim Committees on Public Health, Welfare, and Labor by the second week in July each year.

20-87-107. Coordination with other programs.

In implementing this chapter, the department shall coordinate with other governmental programs to increase efficiency and, if it is beneficial to another state program, combine drug pricing negotiations to maximize drug rebates for this and other programs, including the state Medicaid program.

SECTION 2. Arkansas Code § 17-92-205, concerning rules and regulations for the Arkansas State Board of Pharmacy, is amended to add an additional subsection to read as follows:

(d)(1) The board shall adopt rules requiring disclosure by retail pharmacies to Prescription Drug Fair Pricing Program participants of the amount of savings provided as a result of the Prescription Drug Fair Pricing Program.

(2) The rules shall protect information that is proprietary in nature.

SECTION 3. Arkansas Code Title 19, Chapter 6, Subchapter 4 is amended to add an additional section to read as follows:

19-6-487. Prescription Drug Fair Pricing Dedicated Fund.

(a) There is created on the books of the Treasurer of State, Auditor of State, and Chief Fiscal Officer of the State a special revenue fund to be known as the "Prescription Drug Fair Pricing Dedicated Fund".

(b)(1) All moneys collected under Title 20, Chapter 87 shall be deposited into the State Treasury to the credit of the fund as special revenues.

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

(c) The fund shall be used by the Department of Human Services to reimburse retail pharmacies for discounted prices provided to Prescription

Drug Fair Pricing Program participants, and reimburse the department for the costs of administering the program, including contracted services, computer costs, professional fees paid to retail pharmacies, and other reasonable program costs.

/s/ J. Johnson