

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.

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005

A Bill

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

For An Act To Be Entitled

10 AN ACT TO ESTABLISH THE ARKANSAS RX PROGRAM; AND
11 FOR OTHER PURPOSES.

Subtitle

14 AN ACT TO ESTABLISH THE ARKANSAS RX
15 PROGRAM.

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

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

22 20-76-501. Findings.

23 The General Assembly finds that:

24 (1) Affordability is critical in providing access to
25 prescription drugs for Arkansas residents;

26 (2) The state should take steps to:

27 (A) Make prescription drugs more affordable for qualified
28 Arkansas residents; and

29 (B) Integrate the program as part of any statewide program
30 for the uninsured;

31 (3) The state should not:

32 (A) Discourage employers from offering or paying for
33 prescription drug benefits for their employees; or

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



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

4
 5 20-76-502. Definitions.

6 As used in this subchapter:

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

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

12 (3) "Director" means the Director of the Department of Human
 13 Services;

14 (4) "Initial discounted price" means the price the department
 15 pays to Arkansas Rx Program participating retail pharmacies for a drug under
 16 the Arkansas Rx Program;

17 (5) "Labeler" means an person or entity that:

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

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

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

24 (A) A retail pharmacy located in this state; or

25 (B) Another business licensed to dispense prescription
 26 drugs in this state;

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

28 (A) Who is sixty-five (65) years of age or older; or

29 (B)(i) Who has a family income equal to or less than three
 30 hundred fifty percent (350%) of the federal poverty level;

31 (ii) Who is enrolled in the program; and

32 (iii)(a) Whose family incurs unreimbursed expenses
 33 for prescription drugs that equal five percent (5%) or more of family income
 34 or total unreimbursed medical expenses equal fifteen percent (15%) or more of
 35 family income.

36 (b) For purposes of this subdivision, the cost

1 of drugs provided under this subchapter is an expense incurred by the family
 2 for eligibility determination purposes; and

3 (8) "Secondary discounted price" means the initial discounted
 4 price minus any further discounts paid for out of the Arkansas Rx Fund.

5
 6 20-76-503. Program established.

7 (a) The Arkansas Rx Program is established to reduce prescription drug
 8 prices and to improve the quality of health care for residents of the state.

9 (b)(1) The Department of Human Services shall administer the program.

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

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

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

16
 17 20-76-504. Rebate agreement.

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

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

25
 26 20-76-505. Rebate amount.

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

30 (b) The director shall take into consideration:

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

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

34 (3) Any other available information on prescription drug prices
 35 and price discounts.

36 (c) The director shall use his or her best efforts to obtain an

1 initial rebate amount equal to or greater than the rebate calculated under
 2 the Medicaid rebate program under 42 U.S.C. § 1396r-8.

3 (d) To assist with the rebate that begins October 1, 2007, under § 20-
 4 76-506(d), the director shall use his or her best efforts to obtain a
 5 discount equal to or greater than the amount of any discount, rebate, or
 6 price reduction for prescription drugs provided to the United States
 7 government.

8
 9 20-76-506. Discounted prices for qualified residents.

10 (a) Each participating retail pharmacy shall sell covered drugs to
 11 qualified residents at the lower of the initial discounted price or the
 12 secondary discounted price as those prices are determined by the Department
 13 of Human Services under this subchapter.

14 (b) Taking into consideration reduced prices for state and federally
 15 capped drug programs, differential dispensing fees, administrative overhead,
 16 and incentive payments, the department shall establish discounted prices for
 17 drugs covered by a rebate agreement.

18 (c) Beginning January 1, 2006, a participating retail pharmacy shall
 19 offer the initial discounted price to qualified residents.

20 (d) No later than October 1, 2006, a participating retail pharmacy
 21 shall offer the secondary discounted price if available to qualified
 22 residents.

23
 24 20-76-507. Operation of program.

25 (a)(1) The Arkansas State Board of Pharmacy shall adopt rules
 26 requiring disclosure by participating retail pharmacies to qualified
 27 residents of the amount of savings provided as a result of the Arkansas Rx
 28 Program.

29 (2) The rules shall protect proprietary information.

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

33 (c) A participating retail pharmacy shall submit claims to the
 34 department to verify the amount charged to qualified residents under § 20-76-
 35 506.

36 (d) On a biweekly basis, the department shall reimburse a

1 participating retail pharmacy for the difference between the initial
 2 discounted price and the secondary discounted price provided to qualified
 3 residents under § 20-76-506.

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

6
 7 20-76-508. Action with regard to nonparticipating manufacturers and
 8 labelers.

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

12 (b) The Department of Human Services shall:

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

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

17 (c) The department shall impose Medicaid prior authorization
 18 requirements in the Arkansas Rx Program for the dispensing of prescription
 19 drugs provided by manufacturers or labelers who do not participate in the
 20 Arkansas Rx Program, as permitted by law:

21 (1) If the department determines it is appropriate to do so in
 22 order to encourage manufacturer and labeler participation in the program; and

23 (2) So long as the additional prior authorization requirements
 24 remain consistent with the goals of the Arkansas Rx Program and the
 25 requirements of Title XIX of the Social Security Act, 42 U.S.C. § 1396 et
 26 seq.

27
 28 20-76-509. Arkansas Rx Program Fund.

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

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

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

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

3 (1) Retail pharmacies for discounted prices provided to
 4 qualified residents under § 20-76-506; and

5 (2) The department for contracted services including pharmacy
 6 claims processing fees, administrative and associated computer costs, and
 7 other reasonable program costs.

8 (d) Surplus funds in the fund shall be used for the benefit of the
 9 program.

10
 11 20-76-510. Annual summary report.

12 The Department of Human Services shall report the enrollment and
 13 financial status of the program to the Legislative Council by October 1 each
 14 year.

15
 16 20-76-511. Obligations of department.

17 (a) The Department of Human Services shall:

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

20 (2) Undertake outreach efforts to:

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

22 (B) Maximize enrollment of qualified residents.

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

25
 26 20-76-512. Medical assistance programs.

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

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

31 (1) Coordinate other programs of the department with this
 32 program; and

33 (2) Take actions to enhance efficiency, reduce the cost of
 34 prescription drugs, and maximize the benefits to the programs and enrollees,
 35 including providing the benefits of this program to enrollees in other
 36 programs of the department.

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20-76-513. Rules.

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