

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  
4

As Engrossed: H2/2/05

# A Bill

HOUSE BILL 1241

5 By: Representatives McDaniel, Medley, Bradford, J. Johnson, Thyer, Dunn, Borhauer, Davis, Edwards,  
6 Flowers, Kidd, J. Martin, Ragland, L. Smith, Thompson, Wills  
7

## For An Act To Be Entitled

10 AN ACT TO ESTABLISH THE ARKANSAS RX PROGRAM; AND  
11 FOR OTHER PURPOSES.  
12

### Subtitle

14 AN ACT TO ESTABLISH THE ARKANSAS RX  
15 PROGRAM.  
16  
17

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
19

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.

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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) "Labeler" means a person or entity that:

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

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

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

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

22           (ii) Another business licensed to dispense prescription  
23 drugs in this state.

24           (B) "Participating retail pharmacy" does not mean a mail-  
25 order pharmacy; and

26           (6) "Qualified resident" means a resident of the state:

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

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

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

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

35           (b) For purposes of this subdivision, the cost  
36 of drugs provided under this subchapter is an expense incurred by the family

1 for eligibility determination purposes.

2  
3 20-76-503. Program established.

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

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

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

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

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

13  
14 20-76-504. Rebate agreement.

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

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

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

26 (2) An additional penalty of five percent (5%) of the total  
27 delinquent amount shall be assessed each quarter that delinquent rebates  
28 remain unpaid to the state.

29 (d) The Attorney General may file suit in Pulaski County Circuit Court  
30 to enforce rebate agreements and to collect delinquent rebates.

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32 20-76-505. Rebate amount.

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

36 (b) The director shall take into consideration:

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

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

4           (3) Any other available information on prescription drug prices  
5 and price discounts.

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

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

13  
14           20-76-506. Discounted prices for qualified residents.

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

18  
19           20-76-507. Operation of program.

20           (a)(1) The Arkansas State Board of Pharmacy shall adopt rules  
21 requiring disclosure by participating retail pharmacies to qualified  
22 residents of the amount of savings provided as a result of the Arkansas Rx  
23 Program.

24           (2) The rules shall protect proprietary information.

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

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

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

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

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36           20-76-508. Action with regard to nonparticipating manufacturers and

1 labelers.

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

5 (b) The Department of Human Services shall:

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

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

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

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

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

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21 20-76-509. Arkansas Rx Program Fund.

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

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

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

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

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

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

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

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4       20-76-510. Annual summary report.

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

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9       20-76-511. Obligations of department.

10       (a) The Department of Human Services shall:

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

13               (2) Undertake outreach efforts to:

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

15                       (B) Maximize enrollment of qualified residents.

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

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19       20-76-512. Medical assistance programs.

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

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

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

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

28       20-76-513. Rules.

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

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32                                       */s/ McDaniel, et al*