

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 H2/4/05

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.

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) "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;

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

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

30 (B) Drugs that are within pharmaceutical classifications
31 having no listed preferred drug under the Arkansas Medicaid Evidence Based
32 Preferred Drug Program for which a rebate is in effect under the Arkansas RX
33 program; and

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

35 (A) Is enrolled in the program; and

36 (B)(i) Is sixty-five (65) years of age or older; or

1 (ii) Has a family income equal to or less than three
2 hundred fifty percent (350%) of the federal poverty level;

3
4 20-76-503. Program established.

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

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

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

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

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

14
15 20-76-504. Rebate agreement.

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

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

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

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

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

33
34 20-76-505. Rebate amount.

35 (a) The Director of the Department of Human Services shall negotiate
36 the amount of the rebate required from a manufacturer or labeler in

1 accordance with this section.

2 (b) The director shall take into consideration:

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

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

6 (3) Any other available information on prescription drug prices
7 and price discounts.

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

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

15
16 20-76-506. Discounted prices for qualified residents.

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

20
21 20-76-507. Operation of program.

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

26 (2) The rules shall protect proprietary information.

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

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

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

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

1
2 20-76-508. Action with regard to nonparticipating manufacturers and
3 labelers.

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

7 (b) The Department of Human Services shall:

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

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

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

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

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

22
23 20-76-509. Arkansas Rx Program Fund.

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

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

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

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

34 (1) Retail pharmacies for rebates provided under this
35 subchapter; and

36 (2) The department for contracted services including pharmacy

1 claims processing fees, administrative and associated computer costs, and
2 other reasonable program costs.

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

5
6 20-76-510. Annual summary report.

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

10
11 20-76-511. Obligations of department.

12 (a) The Department of Human Services shall:

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

15 (2) Undertake outreach efforts to:

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

17 (B) Maximize enrollment of qualified residents.

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

20
21 20-76-512. Medical assistance programs.

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

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

26 (1) Coordinate other programs of the department with this
27 program; and

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

30 20-76-513. Rules.

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

33
34 */s/ McDaniel, et al*