

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 *As Engrossed: H2/2/05 H2/4/05 H2/11/05 H2/16/05 S2/22/05*

2 85th General Assembly

# A Bill

3 Regular Session, 2005

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, *Abernathy, Bolin, Bond, Boyd, Clemons,*  
7 *Cook, Cooper, D. Creekmore, Dickinson, Everett, George, R. Green, Hardy, Harrelson, Jeffrey, D.*  
8 *Johnson, Ledbetter, Mack, Pate, Petrus, Saunders, Walters, Wells*

9 By: *Senator J. Bookout*

10

11

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## For An Act To Be Entitled

13

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

15

16

## Subtitle

17

AN ACT TO ESTABLISH THE ARKANSAS RX  
18 PROGRAM.

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21

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

22

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

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20-76-501. Findings.

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The General Assembly finds that:

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

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(2) The state should take steps to:

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

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

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(3) The state should not:

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

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

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

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8                   20-76-502. Definitions.

9                   As used in this subchapter:

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

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

15                   (3) "Director" means the Director of the Department of Human  
16 Services or his or her designee;

17                   (4) "Labeler" means a 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                   (5) "Participating retail pharmacy" means a participant in the  
23 Arkansas Rx Program that is:

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

25                   (ii) Another business licensed to dispense prescription  
26 drugs in this state.

27                   (B) "Participating retail pharmacy" does not mean a mail-  
28 order pharmacy;

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

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

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

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

2 (A) Is not otherwise enrolled in or covered by any  
3 prescription drug benefit or insurance plan, including Medicaid and Medicare  
4 Part D;

5 (B) Is enrolled in the program; and

6 (C)(i) Is sixty-five (65) years of age or older; or  
7 (ii) Has a family income equal to or less than three  
8 hundred fifty percent (350%) of the federal poverty level;

9  
10 20-76-503. Program established.

11 (a) Subject to the available funding, the Arkansas Rx Program is  
12 established to reduce prescription drug prices and to improve the quality of  
13 health care for residents of the state.

14 (b)(1) Subject to the available funding, the Department of Human  
15 Services shall administer the program.

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

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

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

22  
23 20-76-504. Rebate agreement.

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

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

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

35 (2) An additional penalty of five percent (5%) of the total  
36 delinquent amount shall be assessed each quarter that delinquent rebates

1 remain unpaid to the state.

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

5  
6 20-76-505. Rebate amount.

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

10 (b) The director shall take into consideration:

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

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

14 (3) Any other available information on prescription drug prices  
15 and price discounts.

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

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

23  
24 20-76-506. Discounted prices for qualified residents.

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

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29 20-76-507. Operation of program.

30 (a) Participating retail pharmacies shall disclose to qualified  
31 residents the amount of savings provided as a result of the Arkansas Rx  
32 Program.

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

36 (c) A participating retail pharmacy shall submit claims to the

1 department in order to determine the appropriate rebates.

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

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

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

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

13 (b) The Department of Human Services shall:

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

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

18  
19 20-76-509. Arkansas Rx Program Fund.

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

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

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

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

30 (1) Retail pharmacies for rebates provided under this  
31 subchapter; and

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

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

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2 20-76-510. Annual summary report.

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

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7 20-76-511. Obligations of department.

8 (a) The Department of Human Services shall:

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

11 (2) Undertake outreach efforts to:

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

13 (B) Maximize enrollment of qualified residents.

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

16  
17 20-76-512. Medical assistance programs.

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

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

22 (1) Coordinate other programs of the department with this  
23 program; and

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

26 20-76-513. Rules.

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

29  
30 20-76-513. Implementation.

31 The Department of Human Services shall begin offering Arkansas Rx  
32 Program drug benefits under this subchapter on February 1, 2006 and shall  
33 immediately make all best efforts to:

34 (1) Enroll eligible participants;

35 (2) Publicize and promote the Arkansas Rx Program;

36 (3) Negotiate rebates with manufacturers;

