

By: Representative Evans

To: Public Health and
Welfare; Appropriations

HOUSE BILL NO. 828

1 AN ACT TO BE KNOWN AS THE PRESCRIPTION DRUG FAIR-PRICING ACT;
2 TO PROVIDE FOR LEGISLATIVE FINDINGS AND DEFINITIONS; TO ESTABLISH
3 THE PRESCRIPTION DRUG PROGRAM WITHIN THE STATE DEPARTMENT OF
4 HEALTH TO LOWER PRESCRIPTION DRUG PRICES FOR UNINSURED AND
5 UNDERINSURED RESIDENTS OF THE STATE; TO PROVIDE THAT A DRUG
6 MANUFACTURER OR LABELER THAT SELLS PRESCRIPTION DRUGS IN THE STATE
7 MAY VOLUNTARILY ELECT TO ENTER INTO A REBATE AGREEMENT WITH THE
8 DEPARTMENT; TO PROVIDE THAT THE DIRECTOR OF THE DEPARTMENT SHALL
9 NEGOTIATE THE TERMS OF THE REBATE; TO PROVIDE THAT IF A DRUG
10 MANUFACTURER OR LABELER ELECTS NOT TO AGREE TO A REBATE, THE
11 DIRECTOR MAY PLACE THEIR PRODUCTS ON THE PRIOR AUTHORIZATION LIST
12 FOR THE MEDICAID PROGRAM; TO PROVIDE THAT THE DIRECTOR SHALL
13 PUBLICIZE TO HEALTH CARE PROVIDERS INFORMATION ABOUT THE RELATIVE
14 COSTS OF DRUGS PRODUCED BY THOSE THAT ENTER INTO REBATE AGREEMENTS
15 COMPARED TO THOSE THAT DO NOT ENTER INTO REBATE AGREEMENTS; TO
16 REQUIRE RETAIL PHARMACIES TO DISCOUNT THE PRICE OF PRESCRIPTION
17 DRUGS SOLD TO PARTICIPANTS IN THE PROGRAM; TO PROVIDE THAT ALL
18 RESIDENTS OF THE STATE ARE ELIGIBLE TO PARTICIPATE IN THE PROGRAM;
19 TO PROVIDE THAT THE DEPARTMENT SHALL UNDERTAKE OUTREACH EFFORTS TO
20 BUILD PUBLIC AWARENESS OF THE PROGRAM AND MAXIMIZE ENROLLMENT; TO
21 DIRECT THE STATE BOARD OF PHARMACY TO ADOPT RULES REQUIRING
22 DISCLOSURE BY RETAIL PHARMACIES TO PROGRAM PARTICIPANTS OF THE
23 AMOUNT OF SAVINGS PROVIDED AS A RESULT OF THE PROGRAM; TO PROVIDE
24 THAT THE DEPARTMENT SHALL REIMBURSE RETAIL PHARMACIES FOR
25 DISCOUNTED PRICES PROVIDED TO PROGRAM PARTICIPANTS AND DISPENSING
26 FEES; TO PROVIDE PROCEDURES FOR RESOLVING DISCREPANCIES IN REBATE
27 AMOUNTS; TO ESTABLISH A SPECIAL FUND IN THE STATE TREASURY TO
28 RECEIVE REBATE FUNDS FROM MANUFACTURERS AND ANY APPROPRIATED FUNDS
29 FOR THE PROGRAM; AND FOR RELATED PURPOSES.

30 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

31 **SECTION 1.** This act shall be known as the "Mississippi
32 Prescription Drug Fair-Pricing Act."

33 **SECTION 2.** (1) The Legislature finds that:

34 (a) Approximately one (1) in four (4) residents of
35 Mississippi have no or wholly inadequate prescription drug
36 insurance coverage.

37 (b) These uninsured residents pay excessive prices for
38 prescription drugs, far higher prices that are paid by managed
39 care organizations, insurance companies and the federal government
40 for the same medicines and dosages. In many cases, these



41 excessive drug prices have the effect of denying residents access
42 to medically necessary care, thereby threatening their health and
43 safety.

44 (c) Many residents require repeated doctor or medical
45 clinic appointments, having gotten sicker because they cannot
46 afford to take the prescriptions prescribed for them. Many
47 residents are admitted to or treated at hospitals each year
48 because they cannot afford the drugs prescribed for them that
49 could have prevented the need for hospitalization. Many others
50 enter expensive institutional care settings because they cannot
51 afford their necessary prescription drugs that could have
52 supported them outside of an institution. In each of these
53 circumstances, state medical assistance programs, including the
54 Medicaid program, literally pay the price.

55 (d) One major reason uninsured residents pay so much
56 for prescription drugs is that, unlike insured residents, they
57 have no prescription benefits manager negotiating a fair price
58 with the drug companies on their behalf.

59 (e) The state government is the only agent that, as a
60 practical matter, can play an effective role as a market
61 participant on behalf of all residents who are uninsured or
62 underinsured. The state can and should act as a prescription
63 benefit manager, negotiating voluntary drug rebates and using
64 these funds to reimburse retail pharmacies for offering lower drug
65 prices.

66 (2) This act is enacted by the Legislature to create a
67 program in which the state acts as a participant in the
68 prescription drug marketplace, negotiating voluntary rebates from
69 drug companies and using the funds to make prescription drugs more
70 affordable to Mississippi residents. Such a program will improve
71 public health and welfare, promote the economic strength of our
72 society, and substantially benefit state health assistance
73 programs, including the Medicaid program.



74 **SECTION 3.** (1) As used in this section:

75 (a) "Board" means the State Board of Health.

76 (b) "Department" means the State Department of Health.

77 (c) "Director" means the Executive Director of the
78 State Department of Health, or the executive director's
79 designee(s).

80 (d) "Labeler" means an entity or person that receives
81 prescription drugs from a manufacturer or wholesaler and
82 repackages those drugs for later retail sale, and that has a
83 labeler code from the Federal Food and Drug Administration under
84 21 Code of Federal Regulations, 207.20(1999).

85 (e) "Manufacturer" means a manufacturer of prescription
86 drugs, and includes a subsidiary or affiliate of a manufacturer.

87 (f) "Retail pharmacy" means a pharmacy or other
88 facility or business that dispenses or delivers prescription drugs
89 to consumers in this state and is registered with the State Board
90 of Pharmacy under Section 73-21-105.

91 (2) (a) The Prescription Drug Program is established within
92 the department to lower prescription drug prices for uninsured and
93 underinsured residents of the state.

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

97 (c) The director shall negotiate the terms of the
98 rebate from a manufacturer or labeler, taking into consideration
99 the rebate calculated under the Medicaid Rebate Program under 42
100 USCS, Section 1396r-8, the average wholesale price of prescription
101 drugs, and any other available information on prescription drug
102 prices and price discounts.

103 (d) If a drug manufacturer or labeler elects not to
104 agree to a rebate, the director may place those manufacturer's or
105 labeler's products on the prior authorization list for the State
106 Medicaid Program, and take similar actions involving prior



107 authorization or formularies for any other state funded
108 prescription drug program. The board shall promulgate rules
109 creating clear procedures for the implementation of this
110 paragraph. The names of manufacturers and labelers that do not
111 enter into rebate agreements are public information, and the
112 department shall release this information to the public. The
113 director also shall publicize to doctors, pharmacists, and other
114 health professionals information about the relative cost of drugs
115 produced by manufacturers and labelers that enter into rebate
116 agreements compared to those who do not enter into rebate
117 agreements.

118 (e) A retail pharmacy shall discount the price of
119 prescription drugs sold to participants in the prescription drug
120 program.

121 (i) The department shall establish discounted
122 prices for drugs covered by a rebate agreement and shall promote
123 the use of efficacious and reduced-cost drugs, taking into
124 consideration reduced prices for state and federally capped drug
125 programs, differential dispensing fees, administrative overhead,
126 and incentive payments.

127 (ii) Beginning July 1, 2003, a retail pharmacy
128 shall offer prescription drugs at or below the average wholesale
129 price, minus six percent (6%), plus a dispensing fee designated by
130 the director. These initial price levels shall be calculated by
131 the director, and the dispensing fee shall not be less than that
132 provided under the State Medicaid Program. The average wholesale
133 price is the wholesale price charged on a specific commodity that
134 is assigned by the drug manufacturer and is listed in a nationally
135 recognized drug pricing file.

136 (iii) No later than January 1, 2004, a retail
137 pharmacy shall offer prescription drugs at or below the initial
138 price levels specified in subparagraph (ii) minus the amount of
139 any rebate paid by the state to the retail pharmacy. These



140 discounted price levels shall be calculated by the director. In
141 determining the discounted price levels, the director shall
142 consider an average of all rebates weighted by sales of drugs
143 subject to these rebates over the most recent twelve-month period
144 for which the information is available.

145 (f) All residents of the state are eligible to
146 participate in the Prescription Drug Program. The department
147 shall establish simplified procedures for issuing Prescription
148 Drug Program enrollment cards to eligible residents. The
149 department shall undertake outreach efforts to build public
150 awareness of the Prescription Drug Program and maximize enrollment
151 by eligible resident.

152 (g) (i) The State Board of Pharmacy shall adopt rules
153 requiring disclosure by retail pharmacies to Prescription Drug
154 Program participants of the amount of savings provided as a result
155 of the Prescription Drug Program. The rules must protect
156 information that is proprietary in nature.

157 (ii) The department may not impose transaction
158 charges on retail pharmacies that submit claims or receive
159 payments under the Prescription Drug Program.

160 (iii) A retail pharmacy shall submit claims to the
161 department to verify the amount charged to Prescription Drug
162 Program participants.

163 (iv) On a weekly or biweekly basis, the department
164 shall reimburse a retail pharmacy for discounted prices provided
165 to Prescription Drug Program participants and dispensing fees set
166 by the direction.

167 (v) The department shall collect from the retail
168 pharmacies utilization data necessary to calculate the amount of
169 the rebate from the manufacturer or labeler. The department shall
170 protect the confidentiality of all information subject to
171 confidentiality protection under state or federal law, rule or
172 regulation.



173 (h) Discrepancies in rebate amounts must be resolved
174 using the process established in this paragraph.

175 (i) If there is a discrepancy in the
176 manufacturer's or labeler's favor between the amount claimed by a
177 pharmacy and the amount rebated by the manufacturer or labeler,
178 the department, at the department's expense, may hire a mutually
179 agreed-upon independent auditor. If a discrepancy still exists
180 following the audit, the manufacturer or labeler shall justify the
181 reason for the discrepancy or make payment to the department for
182 any additional amount due.

183 (ii) If there is a discrepancy against the
184 interest of the manufacturer or labeler in the information
185 provided by the department to the manufacturer or labeler
186 regarding the manufacturer's or labeler's rebate, the manufacturer
187 or labeler, at the manufacturer's or labeler's expense, may hire a
188 manually agreed-upon independent auditor to verify the accuracy of
189 the data supplied to the department. If a discrepancy still
190 exists following the audit, the department shall justify the
191 reason for the discrepancy or refund to the manufacturer any
192 excess payment made by the manufacturer or labeler.

193 (iii) Following the procedures established in
194 subparagraph (i) or (ii), either the department or the
195 manufacturer or labeler may request a hearing. Supporting
196 documentation must accompany the request for a hearing.

197 (i) The Prescription Drug Program Fund is established
198 as a special fund in the State Treasury to receive funds from
199 manufacturers and labelers who pay rebates and any appropriations
200 or allocations designated for the fund. The purposes of the fund
201 are to reimburse retail pharmacies for discounted prices provided
202 to Prescription Drug Program participants, and reimburse the
203 department for the costs of administering the program, including
204 contracted services, computer costs, professional fees paid to
205 retail pharmacies and other reasonable program costs. Unexpended



206 amounts remaining in the fund at the end of a fiscal year shall
207 not lapse into the State General Fund, and any interest earned on
208 amounts in the fund shall be deposited to the credit of the fund.

209 (j) The department shall report the enrollment and
210 financial status of the Prescription Drug Program to the
211 Legislature by the first week in December.

212 (k) In implementing this section, the department shall
213 coordinate with other governmental programs to increase efficiency
214 and, where it is beneficial to another state program, combine drug
215 pricing negotiations to maximize drug rebates for this and other
216 programs, including the State Medicaid Program.

217 (l) The board may adopt rules to implement the
218 provisions of this section.

219 (m) The department may seek any waivers of federal law,
220 rule or regulation necessary to implement the provisions of this
221 section.

222 **SECTION 4.** This act shall take effect and be in force from
223 and after July 1, 2003.

