

By: Representatives Evans, Robinson (63rd),
Watson

To: Public Health and Human
Services; Appropriations

HOUSE BILL NO. 919

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 FAIR-PRICING PROGRAM WITHIN THE DEPARTMENT
4 OF FINANCE AND ADMINISTRATION TO LOWER PRESCRIPTION DRUG PRICES
5 FOR UNINSURED AND UNDERINSURED RESIDENTS OF THE STATE; TO PROVIDE
6 THAT A DRUG MANUFACTURER OR LABELER THAT SELLS PRESCRIPTION DRUGS
7 IN THE STATE MAY VOLUNTARILY ELECT TO ENTER INTO A DISCOUNT OR
8 REBATE AGREEMENT WITH THE DEPARTMENT; TO PROVIDE THAT THE DIRECTOR
9 OF THE DEPARTMENT SHALL NEGOTIATE THE TERMS OF THE DISCOUNT OR
10 REBATE; TO PROVIDE THAT IF A DRUG MANUFACTURER OR LABELER ELECTS
11 NOT TO AGREE TO A DISCOUNT OR REBATE, THE DIRECTOR MAY PLACE THEIR
12 PRODUCTS ON THE PRIOR AUTHORIZATION LIST FOR THE MEDICAID PROGRAM
13 AND THE DEPARTMENT SHALL RELEASE THE NAMES OF MANUFACTURES AND
14 LABELERS THAT DO NOT ENTER INTO DISCOUNT OR REBATE AGREEMENTS TO
15 THE PUBLIC; TO REQUIRE RETAIL PHARMACIES TO DISCOUNT THE PRICE OF
16 PRESCRIPTION DRUGS SOLD TO PARTICIPANTS IN THE PROGRAM; TO PROVIDE
17 THAT ALL RESIDENTS OF THE STATE ARE ELIGIBLE TO PARTICIPATE IN THE
18 PROGRAM; TO PROVIDE THAT THE DEPARTMENT SHALL UNDERTAKE OUTREACH
19 EFFORTS TO BUILD PUBLIC AWARENESS OF THE PROGRAM AND MAXIMIZE
20 ENROLLMENT; TO PROVIDE THAT THE DEPARTMENT SHALL REIMBURSE RETAIL
21 PHARMACIES FOR DISCOUNTED PRICES PROVIDED TO PROGRAM PARTICIPANTS
22 AND DISPENSING FEES; TO PROVIDE PROCEDURES FOR RESOLVING
23 DISCREPANCIES IN REBATE AMOUNTS; TO ESTABLISH A SPECIAL FUND IN
24 THE STATE TREASURY TO RECEIVE REBATE FUNDS FROM MANUFACTURERS AND
25 ANY APPROPRIATED FUNDS FOR THE PROGRAM; AND FOR RELATED PURPOSES.

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

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

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

30 (a) Approximately one (1) in four (4) residents of
31 Mississippi have no or wholly inadequate prescription drug
32 insurance coverage.

33 (b) These uninsured residents pay excessive prices for
34 prescription drugs, far higher prices than are paid by managed
35 care organizations, insurance companies and the federal government
36 for the same medicines and dosages. In many cases, these
37 excessive drug prices have the effect of denying residents access

38 to medically necessary care, thereby threatening their health and
39 safety.

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

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

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

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

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

71 (a) "Department" means the Department of Finance and
72 Administration;

73 (b) "Office" means the Office of Pharmacy Benefit
74 Management within the Department of Finance and Administration;

75 (c) "Director" means the Executive Director of the
76 Department of Finance and Administration.

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

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

84 (f) "Program" means the Prescription Drug Fair-Pricing
85 Program established in this section.

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

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

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

96 (c) The director shall negotiate discounts and the
97 terms of rebates from a manufacturer or labeler.

98 (d) If a drug manufacturer or labeler elects not to
99 agree to a discount or rebate, the director may place those
100 manufacturer's or labeler's products on the prior authorization
101 list for the state Medicaid program, and take similar actions
102 involving prior authorization or formularies for any other state
103 funded prescription drug program. The department shall promulgate

104 rules creating clear procedures for the implementation of this
105 paragraph. The names of manufacturers and labelers that do not
106 enter into discount or rebate agreements are public information,
107 and the department shall release this information to the public.

108 (e) A retail pharmacy shall discount the price of
109 prescription drugs sold to participants in the prescription drug
110 program in accordance with the following:

111 (i) The department shall establish discounted
112 prices for drugs covered by a rebate agreement and shall promote
113 the use of efficacious and reduced-cost drugs, taking into
114 consideration reduced prices for state and federally capped drug
115 programs, differential dispensing fees, administrative overhead,
116 and incentive payments.

117 (ii) Beginning July 1, 2005, a retail pharmacy
118 shall offer prescription drugs at or below the negotiated rate,
119 plus a dispensing fee designated by the director.

120 (iii) No later than January 1, 2006, a retail
121 pharmacy shall offer prescription drugs at or below the initial
122 price levels specified in subparagraph (ii) minus the amount of
123 any discount or rebate paid by the state to the retail pharmacy.
124 These discounted price levels shall be calculated by the director.
125 In determining the discounted price levels, the director shall
126 consider an average of all rebates weighted by sales of drugs
127 subject to these rebates over the most recent twelve-month period
128 for which the information is available.

129 (f) All residents of the state are eligible to
130 participate in the program. The department shall establish
131 simplified procedures for issuing program enrollment cards to
132 eligible residents. The department shall undertake outreach
133 efforts to build public awareness of the program and maximize
134 enrollment by eligible residents.

135 (g) (i) The department may not impose transaction
136 charges on retail pharmacies that submit claims or receive
137 payments under the program.

138 (ii) A retail pharmacy shall submit claims to the
139 department to verify the amount charged to program participants.

140 (iii) On a weekly or biweekly basis, the
141 department shall reimburse a retail pharmacy for discounted prices
142 provided to program participants and dispensing fees set by the
143 director.

144 (iv) The department shall collect from the retail
145 pharmacies utilization data necessary to calculate the amount of
146 the rebate from the manufacturer or labeler. The department shall
147 protect the confidentiality of all information subject to
148 confidentiality protection under state or federal law, rule or
149 regulation.

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

152 (i) If there is a discrepancy in the
153 manufacturer's or labeler's favor between the amount claimed by a
154 pharmacy and the amount rebated by the manufacturer or labeler,
155 the department, at the department's expense, may hire a mutually
156 agreed-upon independent auditor. If a discrepancy still exists
157 following the audit, the manufacturer or labeler shall justify the
158 reason for the discrepancy or make payment to the department for
159 any additional amount due.

160 (ii) If there is a discrepancy against the
161 interest of the manufacturer or labeler in the information
162 provided by the department to the manufacturer or labeler
163 regarding the manufacturer's or labeler's rebate, the manufacturer
164 or labeler, at the manufacturer's or labeler's expense, may hire a
165 mutually agreed-upon independent auditor to verify the accuracy of
166 the data supplied to the department. If a discrepancy still
167 exists following the audit, the department shall justify the

168 reason for the discrepancy or refund to the manufacturer any
169 excess payment made by the manufacturer or labeler.

170 (iii) Following the procedures established in
171 subparagraph (i) or (ii), either the department or the
172 manufacturer or labeler may request a hearing. Supporting
173 documentation must accompany the request for a hearing.

174 (i) The Prescription Drug Fair-Pricing Program Fund is
175 established as a special fund in the State Treasury to receive
176 funds from manufacturers and labelers who pay rebates and any
177 appropriations or allocations designated for the fund. The
178 purposes of the fund are to reimburse retail pharmacies for
179 discounted prices provided to program participants, and reimburse
180 the department for the costs of administering the program,
181 including contracted services, computer costs, professional fees
182 paid to retail pharmacies and other reasonable program costs.
183 Unexpended amounts remaining in the fund at the end of a fiscal
184 year shall not lapse into the State General Fund, and any interest
185 earned on amounts in the fund shall be deposited to the credit of
186 the fund. These funds shall be used only for the purposes of the
187 program.

188 (j) The department shall report the enrollment and
189 financial status of the program to the Legislature by the first
190 week in December.

191 (k) In implementing this section, the department shall
192 coordinate with other governmental programs to increase efficiency
193 and, where it is beneficial to another state program, combine drug
194 pricing negotiations to maximize drug rebates for this and other
195 programs, including the state Medicaid program. The Division of
196 Medicaid and the State and School Employees Health Insurance Plan
197 may utilize this program for their pharmacy benefit management.

198 (l) The department may adopt rules to implement the
199 provisions of this section.

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

203 **SECTION 4.** This act shall take effect and be in force from
204 and after July 1, 2004.