

Senate Bill 470

By: Senators Hill of the 4th, Thomas of the 2nd, Tate of the 38th, Butler of the 55th and Thomas of the 10th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 31 of the Official Code of Georgia Annotated, relating to health, so as to
2 provide a short title; to provide for legislative intent; to provide definitions; to establish the
3 Georgia Seniors Prescription Drug Benefit Program within the Department of Community
4 Health to reduce prescription drug prices for residents of the state age 55 and over; to provide
5 for operation of the program; to establish the amount of rebates; to require disclosure of
6 savings to program enrollees; to require drug manufacturers who sell prescription drugs to
7 the state to enter into a rebate agreement; to provide for the commissioner of community
8 health to negotiate rebates with drug manufacturers; to require retail pharmacies that
9 participate in the program to discount the price of drugs covered by a rebate agreement; to
10 provide for participating pharmacies to submit claims and receive reimbursement for
11 discounted prices; to provide for the collection of utilization data; to provide for the
12 disclosure of the names of manufacturers who do not enter into rebate agreements; to
13 provide for resolution of discrepancies in rebate amounts; to establish a dedicated fund for
14 rebates; to provide for reports; to provide for outreach efforts; to authorize the adoption of
15 rules and regulations; to provide for related matters; to repeal conflicting laws; and for other
16 purposes.

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

18 **SECTION 1.**

19 Title 31 of the Official Code of Georgia Annotated, relating to health, is amended by adding
20 at the end a new chapter to read as follows:

21 "CHAPTER 46

22 31-46-1.

23 This chapter shall be known and may be cited as the 'Georgia Seniors Prescription Drug
24 Benefit Program Act.'

1 31-46-2.

2 The General Assembly finds that affordability is critical in providing access to prescription
3 drugs for senior residents of this state. It is the intention of the General Assembly to create
4 a program to enable the state to act as a pharmacy benefit manager in order to make
5 prescription drugs more affordable for qualified senior residents of this state and improve
6 their overall health and quality of life.

7 31-46-3.

8 As used in this chapter, the term:

9 (1) 'Average wholesale price' means the wholesale price charged on a specific
10 commodity that is assigned by the drug manufacturer and is listed in a nationally
11 recognized drug pricing file.

12 (2) 'Commissioner' means the commissioner of community health.

13 (3) 'Department' means the Department of Community Health.

14 (4) 'Initial discounted price' means the lesser of:

15 (A) A price for a prescription drug that is less than or equal to the average wholesale
16 price, minus 6 percent; or

17 (B) The usual and customary charge for a prescription drug plus the dispensing fee
18 provided under the Medicaid program.

19 (5) 'Labeler' means an entity or person that receives prescription drugs from a
20 manufacturer or wholesaler and repackages those drugs for later retail sale and that has
21 a labeler code from the federal Food and Drug Administration under 21 C.F.R. Section
22 207.20 (1999).

23 (6) 'Participating retail pharmacy' or 'retail pharmacy' means a retail pharmacy located
24 in this state, or another business licensed to dispense prescription drugs in this state, that
25 participates in the program and that provides discounted prices to qualified senior
26 residents as provided in this chapter.

27 (7) 'Pharmacy benefit manager' means an entity that procures prescription drugs at a
28 negotiated rate under a contract.

29 (8) 'Program' means the Georgia Seniors Prescription Drug Benefit Program.

30 (9) 'Qualified resident' means a person who is 55 years of age or older, has been a
31 resident of this state for 12 months, has no insurance coverage for prescription drugs, and
32 has obtained a program card from the department.

33 (10) 'Rebate' means the rebate supplied to the state by a drug manufacturer which shall
34 be sufficient to cover the administrative costs of the program to the department as well
35 as the secondary discount provided to retail pharmacies.

1 (11) 'Secondary discounted price' means a price that is equal to or less than the initial
2 discounted price minus the amount of any rebate paid by the state to a participating retail
3 pharmacy.

4 31-46-4.

5 (a) The Georgia Seniors Prescription Drug Benefit Program is established with the
6 department to lower prescription drug prices for qualified residents of this state who are 55
7 years of age or older and who are not eligible for benefits under the state Medicaid
8 program.

9 (b) A drug manufacturer or labeler that sells prescription drugs in this state through any
10 publicly supported pharmaceutical assistance program shall enter into a rebate agreement
11 with the department for the program. The rebate agreement shall require the manufacturer
12 or labeler to make rebate payments to the state each calendar quarter or according to a
13 schedule established by the department.

14 (c) The commissioner shall negotiate the amount of the rebate required from a
15 manufacturer or labeler in accordance with this subsection.

16 (1) The commissioner shall take into consideration the rebate calculated under the
17 Medicaid Drug Rebate Program pursuant to 42 U.S.C. Section 1396r-8, the average
18 wholesale price of prescription drugs, and any other information on prescription drug
19 prices and price discounts.

20 (2) The commissioner shall use his or her best efforts to obtain an initial rebate amount
21 equal to or greater than the rebate calculated under the Medicaid Drug Rebate Program
22 pursuant to 42 U.S.C. Section 1396r-8.

23 (3) With respect to the rebate taking effect no later than January 1, 2003, the
24 commissioner shall use his or her best efforts to obtain an amount equal to or greater than
25 the amount of any discount, rebate, or price reduction for prescription drugs provided to
26 the federal government.

27 (d) Any participating retail pharmacy that sells prescription drugs covered by a rebate
28 agreement pursuant to this Code section shall discount the retail price of those drugs sold
29 to qualified residents.

30 (1) The department shall establish discounted prices for drugs covered by a rebate
31 agreement and shall promote the use of efficacious and reduced-cost drugs, taking into
32 consideration reduced prices for state and federally capped drug programs, differential
33 dispensing fees, administrative overhead, and incentive payments.

34 (2) Beginning July 1, 2002, a participating retail pharmacy shall offer the initial
35 discounted price for drugs as defined in paragraph (4) of Code Section 31-46-3.

1 (3) No later than January 1, 2003, a participating retail pharmacy shall offer the
2 secondary discounted price for drugs as defined in paragraph (11) of Code Section
3 31-46-3.

4 (4) In determining the amount of discounted prices, the department shall consider an
5 average of all rebates provided pursuant to this Code section, weighted by sales of drugs
6 subject to these rebates over the most recent 12 month period for which the information
7 is available.

8 31-46-5.

9 The State Board of Pharmacy shall adopt rules and regulations pursuant to Chapter 13 of
10 Title 50, the 'Georgia Administrative Procedure Act,' requiring disclosure by participating
11 retail pharmacies to qualified residents of the amount of savings provided as a result of the
12 Georgia Seniors Prescription Drug Benefit Program. The rules and regulations must
13 consider and protect information that is proprietary in nature.

14 31-46-6.

15 (a) The department may not impose transaction charges under the program on retail
16 pharmacies that submit claims or receive payments under the program.

17 (b) A participating retail pharmacy shall submit claims to the department to verify the
18 amount charged to qualified residents.

19 (c) On a biweekly basis, the department shall reimburse a participating retail pharmacy for
20 discounted prices provided to qualified residents and professional fees. The amount of the
21 initial professional fee shall be set a \$3.00 per prescription.

22 (d) The department shall collect utilization data from the participating retail pharmacies
23 submitting claims necessary to calculate the amount of the rebate from the manufacturer
24 or labeler. The department shall protect the confidentiality of all information obtained
25 under the program to the extent provided by state or federal law, rule, or regulation.

26 31-46-7.

27 (a) The names of manufacturers and labelers who do not enter into rebate agreements
28 pursuant to this chapter are public information and shall be released to health care
29 providers and the public.

30 (b) The commissioner shall provide the General Assembly with an annual report of the
31 names of manufacturers and labelers who have entered into rebate agreements as well as
32 the names of manufacturers and labelers who have not entered into rebate agreements
33 pursuant to this chapter.

1 31-46-8.

2 Discrepancies in rebate amounts shall be resolved using the following process:

3 (1) If there is a discrepancy in the manufacturer's or labeler's favor between the amount
4 claimed by a pharmacy and the amount rebated by the manufacturer or labeler, the
5 department, at the department's expense, may hire a mutually agreed upon independent
6 auditor. If a discrepancy still exists following the audit, the manufacturer or labeler shall
7 justify the reason for the discrepancy or make payment to the department for any
8 additional amount due;

9 (2) If there is a discrepancy against the interest of the manufacturer or labeler in the
10 information provided by the department to the manufacturer or labeler regarding the
11 manufacturer's or labeler's rebate, the manufacturer or labeler, at the manufacturer's or
12 labeler's expense, may hire a mutually agreed upon independent auditor to verify the
13 accuracy of the data supplied to the department. If a discrepancy still exists following the
14 audit, the department shall justify the reason for the discrepancy or refund to the
15 manufacturer or labeler any excess payment made by the manufacturer or labeler; and

16 (3) Following the procedures established in paragraphs (1) and (2) of this Code section,
17 either the department or the manufacturer or labeler may request a hearing pursuant to the
18 rules and regulations of the department and the Office of State Administrative Hearings.

19 31-46-9.

20 The Georgia Seniors Prescription Drug Benefit Dedicated Fund is established to receive
21 revenue from manufacturers and labelers who pay rebates as provided in this chapter. The
22 purposes of the fund are to reimburse retail pharmacies for discounted prices provided to
23 qualified residents pursuant to this chapter; to reimburse the department for contracted
24 services, administrative and associated computer costs, professional fees paid to
25 participating retail pharmacies, and other reasonable program costs; and to benefit the
26 program.

27 31-46-10.

28 The department shall report the enrollment and financial status of the program to the
29 General Assembly by the second week of each regular legislative session.

30 31-46-11.

31 The department shall establish simplified procedures for determining eligibility and issuing
32 program enrollment cards to qualified residents and shall undertake outreach efforts to the
33 extent funds are appropriated and made available to build public awareness of the program
34 and maximize enrollment of qualified residents. The department may adjust the

1 requirements and terms of the program to accommodate any new federally funded
2 prescription drug program.

3 31-46-12.

4 The department may contract with a third party or third parties to administer any or all
5 components of the program, including, but not limited to, outreach, eligibility, claims,
6 administration, and rebate recovery and distribution.

7 31-46-13.

8 The department shall administer the program in a manner that is advantageous to the
9 program and the enrollees in the program. In implementing this chapter, the department
10 may coordinate with other programs and may take actions to enhance efficiency, reduce
11 the cost of prescription drugs, and maximize the benefits of the program to enrollees.

12 31-46-14.

13 The department may adopt rules and regulations pursuant to Chapter 13 of Title 50, the
14 'Georgia Administrative Procedure Act,' to implement the provisions of this chapter.

15 31-47-15.

16 The department may seek any waivers of federal law, rule, or regulation necessary to
17 implement the provisions of this chapter."

18 **SECTION 2.**

19 All laws and parts of laws in conflict with this Act are repealed.