Senate Bill 287

By: Senators James of the 35th and Scott of the 36th

A BILL TO BE ENTITLED

AN ACT

To amend Title 31 of the Official Code of Georgia Annotated, relating to health, so as to provide a short title; to provide for legislative purpose; to provide definitions; to establish an Rx Program within the Department of Medical Assistance to lower prescription drug prices for uninsured and underinsured residents of the state; to provide for discounted prices for Rx Program participants; to provide for eligibility of individuals to participate in the Rx Program; to provide for operation of the Rx Program; to provide for resolution of discrepancies in rebate amounts; to provide for an Rx Dedicated Fund; to provide for an annual report to the General Assembly; to authorize the Department of Human Resources to adopt implementive rules; to authorize waivers of federal law; to provide for other matters relative to the foregoing; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

″CHAPTER 46

31-46-1.

This chapter shall be known and may be cited as the 'Georgia Prescription Drug Fair Pricing Act.'

31-46-2.

It is the intention of the General Assembly to create a program whereby the state acts as a participant in the prescription drug marketplace, negotiating voluntary rebates from drug companies and using the funds to make prescription drugs more affordable to residents of this state. Such a program will improve public health and welfare, promote the economic

strength of our society, and substantially benefit state health assistance programs, including the Medicaid program.

31-46-3.

As used in this chapter, the term:

(1) 'Commissioner' means the commissioner of medical assistance.

(2) 'Department' means the Department of Medical Assistance.

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

(4) 'Manufacturer' means a manufacturer of prescription drugs and includes a subsidiary or affiliate of a manufacturer.

(5) 'Retail pharmacy' means a retail pharmacy or other business licensed to dispense prescription drugs in this state.

31-46-4.

(a) An Rx Program is established within the department to lower prescription drug prices for uninsured and underinsured residents of the state.

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

(c) The commissioner shall negotiate the terms of the rebate from a manufacturer or labeler, taking into consideration the rebate calculated under the Medicaid Rebate Program pursuant to 42 United States Code, Section 1396r-8, the average wholesale price of prescription drugs, and any other available information on prescription drug prices and price discounts.

(d) If a drug manufacturer or labeler elects not to agree to a rebate, the commissioner may place those manufacturer´s or labeler´s products on the prior authorization list for the state Medicaid program and take similar actions involving prior authorization or formularies for any other state funded prescription drug program. The commissioner shall promulgate rules creating clear procedures for the implementation of this subsection. The names of manufacturers and labelers that do not enter into rebate agreements are public information and the department shall release this information to the public. The commissioner shall also publicize to doctors, pharmacists, and other health professionals information about the relative cost of drugs produced by manufacturers and labelers that enter into rebate agreements compared to those who do not enter into rebate agreements.

(e) A retail pharmacy shall discount the price of prescription drugs sold to Rx Program participants.

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

(2) Beginning July 1, 2001, a retail pharmacy shall offer prescription drugs at or below the average wholesale price, minus 6 percent, plus a dispensing fee designated by the commissioner. These initial price levels shall be calculated by the commissioner and the dispensing fee shall not be less than that provided under the state Medicaid program. The average wholesale price is the wholesale price charged on a specific commodity that is assigned by the drug manufacturer and is listed in a nationally recognized drug pricing file.

(3) No later than January 1, 2002, a retail pharmacy shall offer prescription drugs at or below the initial price levels specified in paragraph (2) minus the amount of any rebate paid by the state to the retail pharmacy. These discounted price levels shall be calculated by the commissioner. In determining the discounted price levels, the commissioner shall consider an average of all rebates weighted by sales of drugs subject to these rebates over the most recent 12 month period for which the information is available.

(f) All residents of the state are eligible to participate in the Rx Program. The department shall establish simplified procedures for issuing Rx Program enrollment cards to eligible residents. The department shall undertake outreach efforts to build public awareness of the Rx Program and maximize enrollment by eligible residents.

(g)(1) The department shall adopt rules requiring disclosure by retail pharmacies to Rx Program participants of the amount of savings provided as a result of the Rx Program. The rules must protect information that is proprietary in nature.

(2) The department may not impose transaction charges on retail pharmacies that submit claims or receive payments under the Rx Program.

(3) A retail pharmacy shall submit claims to the department to verify the amount charged to Rx Program participants.

(4) On a weekly or biweekly basis, the department shall reimburse a retail pharmacy for discounted prices provided to Rx Program participants and dispensing fees set by the commissioner.

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

(h) Discrepancies in rebate amounts shall be resolved using the process established in this subsection.

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

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

(3) Following the procedures established in paragraph (1) or (2) of this subsection, either the department or the manufacturer or labeler may request a hearing. Supporting documentation shall accompany the request for a hearing.

(i) The Rx Dedicated Fund is established to receive revenue from manufacturers and labelers who pay rebates and any appropriations or allocations designated for the fund. The purposes of the fund are to reimburse retail pharmacies for discounted prices provided to Rx Program participants, and reimburse the department for the costs of administering the program, including contracted services, computer costs, professional fees paid to retail pharmacies, and other reasonable program costs. The Rx Dedicated Fund is a nonlapsing dedicated fund. Interest on Rx Dedicated Fund balances accrues to the fund.

(j) The department shall report the enrollment and financial status of the Rx Program to the General Assembly by the second week in January each year.

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

(l) The department may adopt rules to implement the provisions of this chapter.

(m) The department may seek any waivers of federal law, rule, or regulation necessary to implement the provisions of this chapter.″

SECTION 2.

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