

Senate Bill 85

By: Senators Tate of the 38th, Butler of the 55th, Seay of the 34th, Miles of the 43rd, Jones of the 10th and others

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 establish the Georgia Rx Program to reduce prescription drug prices for residents of this
3 state; to provide a short title; to provide for legislative intent; to provide definitions; to
4 provide for operation of the program; to establish the amount of rebates; to require disclosure
5 of savings to program enrollees; to require drug manufacturers who sell prescription drugs
6 to the state to enter into a rebate agreement; to provide for the commissioner of community
7 health to negotiate rebates with drug manufacturers; to require retail pharmacies that
8 participate in the program to discount the price of drugs covered by a rebate agreement; to
9 provide for participating pharmacies to submit claims and receive reimbursement for
10 discounted prices; to provide for the collection of utilization data; to provide for the
11 disclosure of the names of manufacturers who do not enter into rebate agreements; to provide
12 for resolution of discrepancies in rebate amounts; to establish a dedicated fund for rebates;
13 to provide for reports; to provide for outreach efforts; to authorize the adoption of rules and
14 regulations; to repeal conflicting laws; and for other purposes.

15 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

16 **SECTION 1.**

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

19 **"CHAPTER 46**

20 31-46-1.

21 This chapter shall be known and may be cited as the 'Georgia Rx Act.'

22 31-46-2.

23 The General Assembly finds that affordability is critical in providing access to prescription
24 drugs for uninsured residents of this state. Since the state is currently utilizing pharmacy
25 benefit managers for a variety of programs, the state may effectively and practically act as

1 a market participant on behalf of all uninsured residents. It is the intent of the General
 2 Assembly to create a prescription drug program to enable the state to act as a pharmacy
 3 benefit manager in order to make prescription drugs more affordable for qualified residents
 4 of this state and to improve their overall health and quality of life through negotiating
 5 voluntary rebates with prescription drug companies.

6 31-46-3.

7 As used in this chapter, the term:

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

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

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

13 (4) 'Discounted price' means a discounted price that is equal to the manufacturer's rebate
 14 obtained by the state less any administrative fees.

15 (5) 'Labeler' means an entity or person that receives prescription drugs from a
 16 manufacturer or wholesaler and repackages those drugs for later retail sale and that has
 17 a labeler code from the federal Food and Drug Administration under 21 C.F.R. Section
 18 207.20 (1999).

19 (6) 'Manufacturer' means a manufacturer of prescription drugs as defined in 42 U.S.C.
 20 Section 1396r-8(k)(5), including a subsidiary or affiliate of a manufacturer.

21 (7) 'Participating retail pharmacy' or 'retail pharmacy' means a retail pharmacy located
 22 in this state or another business licensed to dispense prescription drugs in this state that
 23 participates in the state Medicaid program or voluntarily agrees to participate in the
 24 program provided in this chapter.

25 (8) 'Pharmacy benefit manager' means an entity that procures prescription drugs at a
 26 negotiated rate under a contract.

27 (9) 'Program' means the Georgia Rx Program.

28 (10) 'Qualified resident' means a person who:

29 (A) Either:

30 (i) Is 55 years of age or older;

31 (ii) Is eligible for assistance under the medicare program; or

32 (iii) Has a net family income below 350 percent of the federal poverty level;

33 (B) Has been a resident of this state for at least 12 months;

34 (C) Has no insurance coverage for prescription drugs;

35 (D) Is not qualified for the state's Medicaid program; and

36 (E) Has obtained a program card from the department.

1 (11) 'Rebate' means the rebate supplied to the state by a drug manufacturer which shall
2 be sufficient to cover the administrative costs of the program to the department as well
3 as the discount provided to retail pharmacies.

4
5 31-46-4.

6 (a) The Georgia Rx Program is established with the department to lower prescription drug
7 prices for qualified residents of this state through the negotiation of discounts and rebates
8 with drug manufacturers or labelers.

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 price
18 provided to eligible entities under 42 U.S.C. Section 256b, the average wholesale price
19 of prescription drugs, and any other information on prescription drug prices, discounts,
20 and rebates; and

21 (2) The commissioner shall use his or her best efforts to obtain an amount equal to or
22 greater than the amount of any discount, rebate, or price reduction for prescription drugs
23 provided to the federal government.

24 (d) Retail pharmacies or other businesses licensed to dispense prescription drugs located
25 in this state that participate in the state Medicaid program shall participate in this program.

26 (e) No later than January 1, 2006, any participating retail pharmacy that sells prescription
27 drugs covered by a rebate agreement pursuant to this Code section shall discount the retail
28 price of those drugs sold to qualified residents as follows:

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

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

1 31-46-5.

2 The State Board of Pharmacy shall adopt rules and regulations pursuant to Chapter 13 of
3 Title 50, the 'Georgia Administrative Procedure Act,' requiring disclosure by participating
4 retail pharmacies to qualified residents of the amount of savings provided as a result of the
5 Georgia Rx Program. The rules and regulations must consider and protect information that
6 is proprietary in nature.

7 31-46-6.

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

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

12 (c) On a biweekly basis, the department shall reimburse a participating retail pharmacy for
13 discounted prices provided to qualified residents and professional fees. The professional
14 fee shall be no less than \$3.00 per prescription.

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

19 31-46-7.

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

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

27

28 31-46-8.

29 (a) The names of retail pharmacies and other businesses licensed to dispense prescription
30 drugs in this state who do not participate in the program under this chapter are public
31 information and shall be released to health care providers and the public.

32 (b) The commissioner shall provide the General Assembly with an annual report of the
33 names of retail pharmacies and other businesses licensed to dispense prescription drugs in
34 this state that do and that do not participate in the program under this chapter.

1 31-46-9.

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 31-46-10.

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

26 31-46-11.

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

29 31-46-12.

30 (a) The department shall establish simplified procedures for determining eligibility and
31 issuing program enrollment cards to qualified residents and shall undertake outreach efforts
32 to the extent funds are appropriated and made available to build public awareness of the
33 program and maximize enrollment of qualified residents. The department shall be
34 authorized to charge qualified residents an annual enrollment fee not to exceed \$15.00.

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

3 (c) The department may enter into alliances and develop regional strategies with the
4 governments of other jurisdictions and with other public and private entities for the purpose
5 of reducing prescription drug prices under this chapter.

6 31-46-13.

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

10 31-46-14.

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

15 31-46-15.

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

18 31-46-16.

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

21 **SECTION 2.**

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