

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2002

—————
A N A C T

RELATING TO PHARMACEUTICAL ASSISTANCE TO THE ELDERLY ACT

Introduced By: Representatives Costantino, Ginaitt, Fox, Moura, and Dennigan

Date Introduced: February 05, 2002

Referred To: House Health, Education & Welfare

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 42-66.2-3, 42-66.2-4, 42-66.2-5, 42-66.2-6 and 42-66.2-10 of the
2 General Laws in Chapter 42-66.2 entitled "Pharmaceutical Assistance to the Elderly Act" are
3 hereby amended to read as follows:

4 **42-66.2-3. Definitions.** -- As used in this chapter, unless the context requires otherwise:

5 (1) "Consumer" means any full-time resident of the state who fulfills the eligibility
6 requirements set forth in section 42-66.2-5. Residence for purposes of this chapter shall be in
7 accordance with the definitions and evidence standards set forth in section 17-1-3.1.

8 (2) "Contractor" means a third party or private vendor capable of administering a
9 program of reimbursement for prescription drugs, and drug program eligibility administrative
10 support as required by the director, the vendor to be determined through a competitive bid process
11 in which the director awards a three (3) year contract for services.

12 (3) "Department" means the department of elderly affairs.

13 (4) "Director" means the director of the department of elderly affairs.

14 (5) (i) ~~"Drugs" and "eligible"~~ "Eligible drugs" means insulin and shall mean noninjectable
15 drugs which require a physician's prescription according to federal law and which are contained
16 in the following American hospital formulary service pharmacologic-therapeutic classifications
17 categories that have not been determined by the federal "drug efficacy and safety implementation
18 (DESI) commission" to lack substantial evidence of effectiveness. ~~Drugs and eligible~~ Eligible
19 drugs are limited to the following classification categories: cardiac drugs, hypotensive drugs,

1 diuretics, anti-diabetic agents, insulin, disposable insulin syringes, vasodilators (cardiac
2 indications only), anticoagulants, hemorreologic agents, glaucoma drugs, drugs for the treatment of
3 Parkinson's disease, antilipemic drugs and oral antineoplastic drugs and drugs for the treatment of
4 asthma and other chronic respiratory diseases and prescription vitamin and mineral supplements
5 for renal patients, and drugs approved for the treatment of Alzheimer's disease, drugs used for the
6 treatment of depression, those drugs approved for the treatment of urinary incontinence, anti
7 infectives, drugs used for the treatment of arthritis, drugs approved for the treatment of
8 osteoporosis, and neuraminidase inhibiting drugs indicated for the treatment of influenza A and
9 B.

10 (ii) "Additional drugs" shall mean noninjectable drugs which require a physician's
11 prescription according to federal law and which are contained in the American hospital
12 formulary service pharmacologic-therapeutic classifications categories that have not been
13 determined by the federal "drug efficacy and safety implementation (DESI) commission" to lack
14 substantial evidence of effectiveness, which are not included in the definition of drugs as defined
15 in section 42-66.2-3(5). However, this shall not include prescription drugs used for cosmetic
16 purposes.

17 (6) "Income" for the purposes of this chapter means the sum of federal adjusted gross
18 income as defined in the Internal Revenue Code of the United States [26 U.S.C. section 1 et seq.]
19 and all nontaxable income including but not limited to, the amount of capital gains excluded from
20 adjusted gross income, alimony, support money, nontaxable strike benefits, cash public assistance
21 and relief (not including relief granted under this chapter), the gross amount of any pension or
22 annuity (including Railroad Retirement Act benefits [45 U.S.C. section 231 et seq.] all payments
23 received under the federal Social Security Act [42 U.S.C. section 301 et seq.] state unemployment
24 insurance laws, and veterans' disability pensions), nontaxable interest received from the federal
25 government or any of its instrumentalities, workers' compensation, and the gross amount of "loss
26 of time" insurance. It does not include gifts from nongovernmental sources, or surplus foods or
27 other relief in kind supplied by a public or private agency.

28 (7) "Pharmaceutical manufacturer" means any entity holding legal title to or possession
29 of a national drug code number issued by the federal food and drug administration.

30 (8) "Pharmacy" means a pharmacy licensed by the state of Rhode Island and whose place
31 of business is physically located within the state.

32 (9) "Pilot program contractor" means Blue Cross and Blue Shield of Rhode Island.

33 **42-66.2-4. Amount of payment.** -- The state shall pay the percentage rate of the
34 maximum allowable amount per prescription as formulated in the contract, as of the date of

1 purchase of the drug, between the contractor and participating pharmacies in accordance with the
2 income eligibility and co-payment shares set forth in section 42-66.2-5. The pharmacy shall
3 collect from the consumer the percentage rate of the maximum allowable amount per prescription
4 as formulated in the contract, as of the date of the purchase of the eligible drug or additional
5 drug, between the contractor and participating pharmacies in accordance with the income
6 eligibility and co-payment shares set forth in section 42-66.2-5. ~~Payment for eligible drugs~~
7 ~~pursuant to this chapter shall only apply to purchases made on or after October 1, 1985.~~

8 **42-66.2-5. Persons eligible.** -- (a) Persons eligible for assistance under the provisions of
9 this chapter include any resident of the state who is at least sixty-five (65) years of age. State and
10 consumer co-payment shares for those persons, shall be determined as follows:

11 (1) For unmarried persons or married persons living separate and apart whose income for
12 the calendar year immediately preceding the year in which assistance is sought is:

13 (i) Less than fifteen thousand nine hundred and thirty-two dollars (\$15,932) the state
14 shall pay sixty percent (60%) of the cost of the prescriptions and the consumer shall pay forty
15 percent (40%) of the cost of the prescriptions;

16 (ii) More than fifteen thousand nine hundred and thirty-two dollars (\$15,932) and less
17 than twenty thousand dollars (\$20,000), the state shall pay thirty percent (30%) of the cost of the
18 prescriptions and the consumer shall pay seventy percent (70%) of the cost of the prescriptions;
19 and

20 (iii) More than twenty thousand dollars (\$20,000) and less than thirty-five thousand
21 dollars (\$35,000), the state shall pay fifteen percent (15%) of the cost of prescriptions and the
22 consumer shall pay eighty-five percent (85%) of the cost of prescriptions.

23 (2) For married persons whose income for the calendar year immediately preceding the
24 year in which assistance is sought hereunder when combined with any income of the person's
25 spouse in the same year is:

26 (i) Nineteen thousand nine hundred and sixteen dollars (\$19,916) or less, the state shall
27 pay sixty percent (60%) of the cost of the prescriptions and the consumer shall pay forty percent
28 (40%) of the cost of the prescriptions;

29 (ii) More than nineteen thousand nine hundred and sixteen dollars (\$19,916) and less
30 than twenty-five thousand dollars (\$25,000), the state shall pay thirty percent (30%) of the cost of
31 the prescriptions and the consumer shall pay seventy percent (70%) of the cost of prescriptions;
32 and

33 (iii) More than twenty-five thousand dollars (\$25,000) and less than forty thousand
34 dollars (\$40,000), the state shall pay fifteen percent (15%) of the cost of prescriptions and the

1 consumer shall pay eighty-five percent (85%) of the cost of prescriptions.

2 (3) Eligibility may also be determined by using income data for the ninety (90) days
3 prior to application for benefits and projecting that income on an annual basis. The income levels
4 shall not include those sums of money expended for medical and pharmaceutical that exceed
5 three percent (3%) of the applicant's annual income or three percent (3%) of the applicant's
6 preceding ninety (90) day income computed on an annual basis.

7 (b) On July 1 of each year, the maximum amount of allowable income for both unmarried
8 and married residents set forth in subsection (a) shall be increased by a percentage equal to the
9 percentage of the cost of living adjustment provided for social security recipients.

10 (c) Notwithstanding the foregoing provisions of this section, no person whose
11 prescription drug expenses are paid or reimbursable, either in whole or in part, by any other plan
12 of assistance or insurance is eligible for assistance under this section, until the person's
13 prescription drug coverage is exhausted during a benefit year, and as provided in subsection (d).

14 (d) The fact that some of a person's prescription drug expenses are paid or reimbursable
15 under the provisions of medicare, part B, shall not disqualify that person, if he or she is otherwise
16 eligible, to receive assistance under this chapter. In those cases, the state shall pay sixty percent
17 (60%) of the cost of those prescriptions for qualified drugs for which no payment or
18 reimbursement is made by the federal government.

19 (e) Eligibility for receipt of any other benefit under any other provisions of the Rhode
20 Island general laws as a result of eligibility for the pharmaceutical assistance program authorized
21 under this section shall be limited to those persons whose income qualify them for a sixty percent
22 (60%) state co-payment share of the cost of prescriptions.

23 (f) For all additional drugs, the consumer shall pay one hundred percent (100%) of the
24 cost of prescriptions as set forth in section 42-66.2-4.

25 **42-66.2-6. Responsibilities of department of elderly affairs.** -- (a) Determination of
26 eligibility. - The department shall adopt regulations relating to the determination of eligibility of
27 prospective consumers and the determination and elimination of program abuse. The department
28 has the power to declare ineligible any consumer who abuses or misuses the established
29 prescription plan. The department has the power to investigate cases of suspected provider or
30 consumer fraud.

31 (b) Rebates for expenses prohibited. - (1) A system of rebates or reimbursements to the
32 consumer for pharmaceutical expenses shall be prohibited.

33 (2) Subdivision (1) shall not be interpreted to exclude other consumers not participating
34 in the pharmaceutical assistance to the elderly program from receiving financial offers or

1 redeemable coupons that are available to only those who have paid for the service or product
2 through direct cash payment, insurance premiums, or cost sharing with an employer.

3 (c) Program criteria. - The program includes the following criteria:

4 (1) Collection of the co-payment by pharmacies is mandatory;

5 (2) Senior citizens participating in the program are not required to maintain records of
6 each transaction but shall sign a receipt for eligible and additional drugs;

7 (3) (i) A system of rebates or reimbursements to the consumer for pharmaceutical
8 expenses is prohibited;

9 (ii) This subdivision shall not be interpreted to exclude other consumers from receiving
10 financial offers or redeemable coupons that are available to only those who have paid for the
11 service or product through direct cash payment, insurance premiums, or cost sharing with an
12 employer.

13 (4) Prescription benefits for any single prescription may be dispensed in the amounts
14 authorized by the physician, and agreed to by the consumer, up to a maximum of a one hundred
15 (100) day supply or two hundred (200) doses, whichever is less and/or a one hundred (100) day
16 supply or one quart of liquid, whichever is less; provided, however, that disposable insulin
17 syringes are dispensed in a quantity of one hundred (100);

18 (5) Experimental drugs are excluded from the program.

19 (6) A system of mail order delivery for prescriptions is prohibited under this program;

20 and

21 (7) Eligible and additional drugs must be dispensed within one year of the original
22 prescription order.

23 (d) The director shall issue an eligibility card containing a program ID number and the
24 time period for which the card is valid.

25 (e) The director shall institute and conduct an educational outreach program and shall
26 provide a mechanism, within the department, to handle all public inquiries concerning the
27 program.

28 (f) The director shall establish a process, in accordance with the Administrative
29 Procedures Act, chapter 35 of this title, to provide an appeals hearing on the determination of
30 eligibility.

31 (g) The director shall forward to the contractor a list of all eligible consumers.

32 **42-66.2-10. Pharmaceutical manufacturer drug rebates.** -- (a) The director shall enter
33 into prescription drug rebate agreements with individual pharmaceutical manufacturers under
34 which the department shall receive a rebate from the pharmaceutical manufacturer equal to the

1 basic rebate supplied by the manufacturer under 42 U.S.C. section 1396a for every eligible and
2 additional prescription drug dispensed under the program. Each prescription drug rebate
3 agreement shall provide that the pharmaceutical manufacturer shall make quarterly rebate
4 payments to the department equal to the basic rebate supplied by the manufacturer under 42
5 U.S.C. section 1396a for the total number of dosage units of each form and strength of a
6 prescription drug which the department reports as reimbursed to providers of prescription drugs,
7 provided these payments shall not be due until thirty (30) days following the manufacturer's
8 receipt of utilization data from the department including the number of dosage units reimbursed
9 to providers of eligible prescription drugs during the quarter for which payment is due.

10 (b) (1) Upon receipt of the utilization data from the department, the pharmaceutical
11 manufacturer shall calculate the quarterly payment. The department may, at its expense, hire a
12 mutually agreed upon independent auditor to verify the calculation and payment. In the event that
13 a discrepancy is discovered between the pharmaceutical manufacturer's calculation and the
14 independent auditor's calculation, the pharmaceutical manufacturer shall justify its calculations or
15 make payment to the department for any additional amount due.

16 (2) The pharmaceutical manufacturer may, at its expense, hire a mutually agreed upon
17 independent auditor to verify the accuracy of the utilization data provided by the department. In
18 the event that a discrepancy is discovered, the department shall justify its data or refund any
19 excess payment to the pharmaceutical manufacturer. The department may, at its expense,
20 establish a grievance adjudication procedure which provides for independent review of
21 manufacturer documentation substantiating the basic rebate amount per unit delivered under 42
22 U.S.C. section 1396a. In the event that a discrepancy is discovered, the department shall justify its
23 data or refund any excess payment to the pharmaceutical manufacturer.

24 (c) All eligible prescription drugs of a pharmaceutical manufacturer that enters into an
25 agreement pursuant to subsection (a) shall be immediately available and the cost of these eligible
26 drugs shall be reimbursed and not subject to any restrictions or prior authorization requirements.
27 Any prescription drug of a manufacturer that does not enter into an agreement pursuant to
28 subsection (a) shall not be reimbursable, unless the department determines the eligible
29 prescription drug is essential to program participants.

30 (d) All rebates collected by the department from the rebate payments made for drugs for
31 persons eligible under the provisions of section 42-66.2-5(a) shall be deposited as general
32 revenues of the state.

1 SECTION 2. This act shall take effect upon passage.

=====
LC01682/SUB A
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO PHARMACEUTICAL ASSISTANCE TO THE ELDERLY ACT

- 1 This act would provide for a second classification of drugs which may be included for
- 2 consideration when providing pharmaceutical assistance to the elderly.
- 3 This act would take effect upon passage.

=====
LC01682/SUB A
=====

