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# STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2002

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A N A C T

RELATING TO THE PHARMACEUTICAL ASSISTANCE TO THE ELDERLY ACT

Introduced By: Senators Izzo, P Fogarty, Roberts, Alves, and Connors

Date Introduced: January 30, 2002

Referred To: Senate Finance

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) ~~"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 drugs are  
19   limited to the following classification categories: cardiac drugs, hypotensive drugs, diuretics, anti-

1 diabetic agents, insulin, disposable insulin syringes, vasodilators (cardiac indications only),  
2 anticoagulants, hemorreologic agents, glaucoma drugs, drugs for the treatment of Parkinson's  
3 disease, antilipemic drugs and oral antineoplastic drugs and drugs for the treatment of asthma and  
4 other chronic respiratory diseases and prescription vitamin and mineral supplements for renal  
5 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 (6) "Income" for the purposes of this chapter means the sum of federal adjusted gross  
11 income as defined in the Internal Revenue Code of the United States [26 U.S.C. section 1 et seq.]  
12 and all nontaxable income including but not limited to, the amount of capital gains excluded from  
13 adjusted gross income, alimony, support money, nontaxable strike benefits, cash public assistance  
14 and relief (not including relief granted under this chapter), the gross amount of any pension or  
15 annuity (including Railroad Retirement Act benefits [45 U.S.C. section 231 et seq.] all payments  
16 received under the federal Social Security Act [42 U.S.C. section 301 et seq.] state unemployment  
17 insurance laws, and veterans' disability pensions), nontaxable interest received from the federal  
18 government or any of its instrumentalities, workers' compensation, and the gross amount of "loss  
19 of time" insurance. It does not include gifts from nongovernmental sources, or surplus foods or  
20 other relief in kind supplied by a public or private agency.

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

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

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

26 (10) "Additional drugs" shall mean noninjectable drugs which require a physician's  
27 prescription according to federal law and which are contained in the American hospital formulary  
28 service pharmacologic-therapeutic classifications categories that have not been determined by the  
29 federal "drug efficacy and safety implementation (DESI) commission" to lack substantial  
30 evidence of effectiveness, which are not included in the definition of drugs as defined in section  
31 42-66.2-3(5). However, this shall not include prescription drugs used for cosmetic purposes.

32 **42-66.2-4. Amount of payment.** -- The state shall pay the percentage rate of the  
33 maximum allowable amount per prescription as formulated in the contract, as of the date of  
34 purchase of the drug, between the contractor and participating pharmacies in accordance with the

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

7 **42-66.2-5. Persons eligible.** -- (a) Persons eligible for assistance under the provisions of  
8 this chapter include any resident of the state who is at least sixty-five (65) years of age. State and  
9 consumer co-payment shares for eligible drugs, shall be determined as follows:

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

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

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

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

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

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

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

32 (iii) More than twenty-five thousand dollars (\$25,000) and less than forty thousand  
33 dollars (\$40,000), the state shall pay fifteen percent (15%) of the cost of prescriptions and the  
34 consumer shall pay eighty-five percent (85%) of the cost of prescriptions.

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

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

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

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

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

21 ~~(e)~~ (f) Eligibility for receipt of any other benefit under any other provisions of the Rhode  
22 Island general laws as a result of eligibility for the pharmaceutical assistance program authorized  
23 under this section shall be limited to those persons whose income qualify them for a sixty percent  
24 (60%) state co-payment share of the cost of prescriptions.

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

30 (d) All rebates collected by the department shall be deposited as general revenues of the  
31 state.

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

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

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1           This act would provide for the inclusion of "additional drugs" under the Pharmaceutical  
2 Assistance to the Elderly Act and would set forth liability for payment and reimbursement of the  
3 costs of those drugs.

4           This act would take effect upon passage.

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