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S T A T E O F R H O D E I S L A N D

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2004

A N A C T

RELATING TO HEALTH AND SAFETY -- FAIR MARKET DRUG PRICING

Introduced By: Senators Paiva-Weed, Gallo, Sheehan, Perry, and Roberts

Date Introduced: February 11, 2004

Referred To: Senate Finance

It is enacted by the General Assembly as follows:

SECTION 1. Title 23 of the General Laws entitled "Health and Safety" is hereby amended by adding thereto the following chapter:

CHAPTER 77

THE FAIR MARKET DRUG PRICING ACT

23-77-1. Short title. – This act shall be called and may be cited as the "Rhode Island Fair Market Drug Pricing Act."

23-77-2. Findings and purpose. – (a) Findings of fact. The legislature finds that:

(1) The state of Rhode Island pays substantially more than the fair market price for many prescription drugs used in the medicaid program. Considering the large quantity of drugs purchased, the state may receive better drug prices by entering into voluntary negotiations with drug companies for supplemental rebates above and beyond the federally-designated rebates.

(2) California and Florida currently have programs to negotiate supplemental rebates. As a result, those states receive better medicaid drug prices than Rhode Island.

(3) In this time of economic difficulty, Rhode Island needs to maximize its financial resources in order to provide as much health coverage as possible for low-income residents. Rhode Island should seek to lower the prices it pays for prescription drugs.

(4) At the same time, approximately one (1) in five (5) Rhode Island residents are uninsured or underinsured for prescription drug coverage, and do not qualify for medicaid. These uninsured or underinsured residents pay excessive prices for prescription drugs. In many cases,

these excessive drug prices have the effect of denying residents access to medically necessary care, thereby threatening their health and safety.

(5) Among these uninsured and underinsured residents, many require repeated doctor or medical clinic appointments; having gotten sicker because they cannot afford to take the drugs prescribed for them. Many are admitted to or treated at hospitals each year because they cannot afford the drugs prescribed for them; drugs which could have prevented or alleviated the need for such hospitalization. Many others enter expensive institutional care settings because they cannot afford the prescription drugs that could have supported them outside of an institution. In each of these circumstances, uninsured and underinsured residents too often become medicaid recipients because of their inability to afford prescription drugs. Helping secure lower drug prices for the uninsured and underinsured directly benefits and supports medicaid.

(6) The state government can play an effective role as a market participant on behalf of all residents who are uninsured, underinsured or are medicaid beneficiaries. The state already provides drugs and acts as a prescription benefits manager for a variety of programs, and should expand that role to negotiate voluntary drug rebates; using these funds to maintain and expand medicaid services while offering lower drug prices to the uninsured and underinsured who do not qualify for medicaid.

(b) Purpose. Recognizing that the state already acts as a prescription benefits manager for a variety of health plans and assistance programs, this law is enacted to cover new populations by expanding the state's role 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 the state medicaid program and to state residents. Such a program shall improve public health and welfare, promote the economic strength of our society, and both directly and indirectly benefit the state medicaid program.

23-77-3. Fair market drug pricing. – (a) Definitions. -- As used in this chapter:

(1) "Director" means the director of the department of human services or the director's designee(s).

(2) "Department" means the department of human services.

(3) "Manufacturer" means a manufacturer of prescription drugs as defined in 42 U.S.C. section 1396r-8 (k) (5), including a subsidiary or affiliate of a manufacturer.

(4) "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).

(5) “Participating retail pharmacy” means a retail pharmacy or other business licensed to dispense prescription drugs in this state that (i) participates in the state medicaid program, or (ii) voluntarily agrees to participate in the Rx card program.

(6) “Wholesaler” means a business licensed to distribute prescription drugs in this state.

(b) Negotiated drug discounts and rebates. –

(1) Drug discount and rebate agreements. The director shall negotiate discount prices or rebates for prescription drugs from drug manufacturers and labelers. A drug manufacturer or labeler that sells prescription drugs in this state may voluntarily elect to negotiate: (i) supplemental rebates for the medicaid program over and above those required under 42 U.S.C. section 1396r-8; (ii) discount prices or rebates for the Rx card program; and (iii) discount prices or rebates for any other state programs that pay for or acquire prescription drugs.

(2) Rebate amounts. In negotiating rebate terms, the director shall take into consideration: the rebate calculated under the medicaid rebate program pursuant to 42 U.S.C. section 1396r-8; the price provided to eligible entities under 42 U.S.C. section 256b; and any other available information on prescription drug prices, discounts and rebates.

(3) Failure to agree.

(i) The director shall prompt a review of whether to place a 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 or operated prescription drug program, if:

(A) the director and a drug manufacturer or labeler fail to reach agreement on the terms of a supplemental medicaid rebate or a discount or rebate for the Rx card program; and

(B) the discounts or rebates offered by the manufacturer or labeler are not as favorable to the state as the prices provided to eligible entities under 42 U.S.C. section 256b.

(ii) Any prior authorization must meet the requirements of 42 U.S.C. section 1396r-8(d)(5) and be done in accordance with existing state law. The director shall promulgate rules creating clear procedures for the implementation of this section.

(iii) 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 and actively distribute it to doctors, pharmacists, and other health professionals.

(c) Rx card. –

(1) Rx card program established. The department shall establish the Rx card program as a state pharmaceutical assistance program to provide discounts to participants for drugs covered by a rebate agreement. Using sums from negotiated rebates, the department shall contract with

wholesalers and/or participating retail pharmacies to deliver discounted prices to Rx card participants.

(2) Amount of discount. The drug discounts received by Rx card participants shall be calculated by the director on a quarterly basis. This calculation shall provide discounts approximately equal to the amount of the negotiated drug rebate minus an amount to cover the reasonable administrative costs of the Rx card program.

(3) Eligibility for participation. (i) An individual is eligible to participate in the Rx card program if he or she is a resident of the state or is eligible for participation in the medicare program.

(ii) An individual is ineligible to participate in the Rx card program if he or she is eligible for assistance under the state's medicaid program or is covered by an insurance policy that provides benefits for prescription drugs equal to or greater than the benefits provided under the Rx card program, as delineated by rules and regulations promulgated by the director.

(iii) The department shall establish simple procedures for enrolling Rx card participants and shall undertake outreach efforts to build public awareness of the program and maximize enrollment by eligible residents.

(iv) There will be no charge for enrolling in the Rx card program.

(4) Operation.

(i) The director shall adopt rules and regulations requiring disclosure by participating retail pharmacies to Rx card program participants of the amount of savings provided as a result of the Rx card program. The rules must protect information that is proprietary in nature.

(ii) A participating retail pharmacy shall verify to the department the amounts charged to Rx card participants and nonparticipants, and shall provide the department with utilization data necessary to calculate rebates from manufacturers and labelers. The department shall protect the confidentiality of all information subject to confidentiality protection under state or federal law, rule or regulation. The department may not impose transaction charges on wholesalers or participating retail pharmacies that submit claims or receive payments under the program.

(iii) Wholesalers and/or participating retail pharmacies shall be paid in advance for Rx card discounts or shall be reimbursed by the department on a weekly basis.

(iv) The department may require a wholesaler or participating retail pharmacy to segregate drugs under the Rx card program from other drug stock. The department may require a wholesaler or participating retail pharmacy to maintain records of acquisition and disposition of drugs under the Rx card program separately from the wholesaler's or pharmacy's other records.

(5) Confidentiality. The department shall not release information about any participant in

the Rx card program except as would be permitted under chapter 5, section 37.3 of these laws.

(d) Administration. – (1) Discrepancies in rebate amounts. Disputes or discrepancies in rebate amounts must be resolved using the process established in this subsection.

(i) 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.

(ii) 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 or labeler any excess payment made by the manufacturer or labeler.

(iii) Following the procedures established in subparagraph (i) or (ii) herein, either the department or the manufacturer or the labeler may request a hearing. Supporting documentation must accompany the request for a hearing. The director shall promulgate rules and regulations to govern the form and content of a hearing request.

(2) Annual summary report. The department shall report the enrollment and financial status of the Rx card program and report savings from supplemental medicaid rebates to the legislature by February 1 each year.

(3) Coordination with other programs. Where the director finds that it is beneficial to both the Rx card program and another state program, including the state medicaid program, to combine drug pricing negotiations to maximize drug rebates, the director shall do so.

(4) Rulemaking. The department shall adopt rules and regulations to implement the provisions of this section.

(5) Waivers. The department may seek any waivers of federal law, rule or regulation necessary to implement the provisions of this section.

23-77-4. Community advisory committee. – (a) The director shall appoint a community advisory committee, composed of health care consumers, advocates, and providers, which shall meet monthly.

(b) The members of the committee shall be as follows: two (2) of whom shall be appointed by the speaker of the house; two (2) of whom shall be appointed by the president of the

senate; one (1) of whom shall be appointed by the house minority leader; one (1) of whom shall be appointed by the senate minority leader; one (1) medical doctor appointed by the Rhode Island Medical Society; one (1) nurse appointed by the Rhode Island State Nurses' Association; one (1) pharmacist appointed by the Rhode Island Pharmacists' Association; one (1) person appointed by Ocean State Action; one (1) social worker appointed by the National Association of Social Workers/Rhode Island Chapter; one (1) person appointed by the Rhode Island Public Interest Research Group; one (1) person appointed by the Coalition for Consumer Justice; one (1) person appointed by the Alliance for Retired Americans; one (1) person appointed by the Hospital Association of Rhode Island; one (1) person appointed by the Health Center Association of Rhode Island; one (1) person appointed by the Gray Panthers; one (1) person appointed by the Rhode Island AFL-CIO; and one (1) person appointed by the American Association of Retired Persons (AARP).

(c) The functions of the committee shall include:

(1) To review and evaluate matters concerning the Rx card program and to propose appropriate recommendations to the department;

(2) To act as advisory committee to the director and concerning the price of prescription drugs; and

(3) To stimulate research into making the program available to Rhode Islanders.

23-77-5. Severability. – If any provision of this chapter or the application of any provision to any person or circumstances is for any reason held invalid, the remainder of the chapter and the application of its provisions to other persons or circumstances shall not be affected thereby.

SECTION 2. This act shall take effect on July 1, 2004.

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EXPLANATION

BY THE LEGISLATIVE COUNCIL

OF

A N A C T

RELATING TO HEALTH AND SAFETY -- FAIR MARKET DRUG PRICING

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This act would establish the Rhode Island Fair Market Drug Pricing Program. This program would establish a state pharmaceutical assistance program whereby the state would negotiate supplemental rebates or discounted prices from drug manufacturers. These savings would be passed on to consumers.

This act would take effect on July 1, 2004.

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