

LC01411

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2006

A N A C T

RELATING TO INSURANCE - THE RHODE ISLAND BEST RX PROGRAM

Introduced By: Representatives Moura, Long, Kilmartin, McCauley, and Lima

Date Introduced: February 16, 2006

Referred To: House Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 27 of the General Laws entitled "Insurance" is hereby amended by
2 adding thereto the following chapter:

3 CHAPTER 20.9

4 THE RHODE ISLAND BEST RX PROGRAM

5 **27-20.9-1. Legislative findings.** -- It is hereby found and declared that some citizens who
6 are uninsured are experiencing difficulty in obtaining prescription pharmaceuticals. Because
7 appropriate use of pharmaceuticals can improve a patient's health outcome and quality of life,
8 instead of more invasive and expensive procedures, it is essential that uninsured residents of
9 Rhode Island have access to outpatient prescription drugs. Therefore, in an effort to promote
10 healthy communities and to protect the public health and welfare of Rhode Island residents, the
11 general assembly will establish a market-based prescription drug assistance program for the
12 uninsured who are most in need of assistance.

13 **27-20.9-2. Definitions.** -- As used in this chapter:

14 (1) "Director" means the director of the Rhode Island department of human services.

15 (2) "Outpatient prescription drug" means a prescription drug that is prescribed for self-
16 administratio n by a patient that is dispensed by a participating pharmacy.

17 (3) "Participating manufacturer" means an entity that distributes generic or branded
18 pharmaceuticals and that enters into an agreement under section 27-20.9-5 to participate in the
19 Rhode Island Best Rx program.

1 (4) "Participating pharmacy" means an establishment located in the United States that has
2 a valid state license or registration to dispense prescription drugs to residents of Rhode Island and
3 that is registered to participate in the Rhode Island Best Rx program.

4 (5) "Rx program participant" means an individual determined eligible for the Rhode
5 Island Rx program who has attested to meeting the eligibility requirements in accordance with
6 Section 7, and has been issued a Rhode Island Best Rx program enrollment card.

7 (6) "State employee health plan" means a health benefits program paid for in whole or in
8 part by the state for employees of Rhode Island, active and/or retired, that is authorized to
9 negotiate prescription drug discounts separately and independently from other state programs.

10 **27-20.9-3. Enrollment cards.** -- A participant in the Rhode Island Best Rx program
11 established pursuant to this chapter shall receive a Rhode Island Best Rx program enrollment card
12 to be presented to participating pharmacies to receive discounts provided by the Rhode Island
13 Best Rx program on the participant's purchases of outpatient prescription drugs.

14 **27-20.9-4. Rx program fund.** -- There is hereby created in the state treasury the "Rhode
15 Island Best Rx Program Fund." The fund shall consist of rebates paid by manufactures pursuant
16 to agreements entered into under section 27-20.9-5, funds appropriated to the program, and any
17 gifts or grants to the program as provided in section 27-20.9-7, and investment earnings.
18 Investment earnings of the fund shall be credited to the fund. The director shall use money in the
19 fund to reimburse a participating pharmacy the amount of the manufacturer's discount off the
20 ingredient cost for an outpatient prescription drug that the participating pharmacy passes through
21 to a Rhode Island Best Rx program participant pursuant to section 4, and for bona fide
22 administrative costs of the program.

23 **27-20.9-5. Program established.** -- (a) There is hereby established a discount drug
24 program known as the "Rhode Island Best Rx program" to provide eligible uninsured persons
25 with access to discounts on outpatient prescription drugs from participating pharmaceutical
26 companies and pharmacists through a state-sponsored discount card program. The program will
27 provide participants discounts on prescriptions based on existing negotiated discounts available to
28 state employee health plans, established through agreements with participating pharmacists and
29 manufacturers under this section, or at a manufacturer's option, an agreement to coordinate
30 enrollment in a pharmaceutical manufacturer's prescription drug assistance program for the
31 uninsured.

32 (b) The entire rebate or discount on a drug offered by the Rhode Island Best Rx program
33 by a participating pharmaceutical manufacturer must be received by the Rx program participant.

34 (c) Subject to subsection 27-20.9-5(e), the manufacturer of a specific drug product may

1 enter into an agreement with the director to offer any of the following to the Rhode Island Best
2 Rx program participants with respect to such drug;

3 (1) The average discount/rebate offered for the same drug(s) to state employee health
4 plans; or

5 (2) A discount/rebate different specified by the manufacturer; or

6 (3) The prescription assistance program the manufacturer offers for such drug to eligible
7 Rhode Island Best Rx program participants.

8 (d) Subject to subsection 27-20.9-5(e), participating pharmacies may enter into an
9 agreement with the director to provide the Rhode Island Best Rx program participants the
10 discount provided in section 27-20.9-10, and may offer program participants further discounts on
11 their dispensing fees and on the amount they mark up their purchase price for prescription drugs
12 by charging a price lower than their usual and customary price.

13 (e) The director shall adopt rules to implement the Rhode Island Best Rx program. The
14 rules shall provide for all of the following:

15 (1) Simplified eligibility determination procedures for the Rhode Island Best Rx program,
16 including methodology for documenting applicants' attestation of income, disability, and
17 coverage status, as appropriate to eligibility groups for which application is being made, and for
18 coordinating any arrangements that may be provided pursuant to subsection 27-20.9-5(c)(3).

19 (2) Claim forms and processes to be used by a participating pharmacy to obtain
20 reimbursement for the ingredient cost discount provided to the Rhode Island Best Rx program
21 participants as agreed to by the drug's manufacturer.

22 (3) Subject to section 27-20.9-6, the dispensing fee payable to participating pharmacies
23 shall be two dollars and fifty cents (\$2.50), except as may be provided pursuant to an agreement
24 under subsection 27-20.9-5(d) or pursuant to subsection 27-20.9-5 (f). The advisory council
25 established in section 27-20.9-16 of this act shall review annually the appropriateness of the
26 dispensing fee.

27 (4) An annual process for determining the discount price to be charged the Rhode Island
28 Best Rx program participants for the drug, which shall be equal to the ingredient cost cap minus
29 the manufacturer discount, established as follows:

30 (i) The ingredient cost cap for purposes of this section shall not be greater than the
31 average amount payable to pharmacies for a drug by the state employee health plans. The director
32 shall obtain on an annual basis the formula each state employee health plan uses to compute
33 payments to a participating pharmacy for drugs furnished to a beneficiary of the state employee
34 health plan, and shall determine the average amount payable to pharmacies for brand and generic

1 drugs by such plans. Such average shall be the ingredient cost cap for purposes of this section.

2 (ii) The manufacturer discount to be subtracted from the ingredient cost cap for purposes
3 of this section shall be the greater of the average of the rebates reported by state employee health
4 plans for the drug, or the amount made available by the manufacturer pursuant to subsection 27-
5 20.9-5 (c)(2). The director shall obtain annually from state employee health plans the amount of
6 the rebate, if any, negotiated by such plans on their contractors for each prescription drug for
7 which the director has entered into a rebate agreement pursuant to section 27-20.9-5, and shall
8 determine the average of any reported rebates for such drug. The rebate amount reported for each
9 state employee health plan for each drug shall be the full amount negotiated by the manufacturer
10 with the state or state agent that administers the state employee health plan.

11 (5) A process for considering whether the administrative fee may be lower than one
12 dollar (\$1.00) per prescription, which shall be determined by the director no less frequently than
13 annually.

14 (6) Arrangements for implementing an agreement entered into under subsection 27-20.9-
15 5(c), including a schedule for participating manufacturers to pay rebates to the director.

16 (7) Arrangements for obtaining from state employee health plans the annual reports of the
17 information required for purposes of this subsection.

18 (f) Subject to available funds, the director is authorized to contract with a third-party for
19 administration of all or part of the program. The director is authorized to consider arrangements
20 to include a mail service pharmacy option for program participants; provided, that no dispensing
21 fee shall be charged for mail service prescriptions; and provided, that the discount price charged
22 participants pursuant to section 27-20.9-10 is limited by mail service usual and customary prices.
23 The availability of mail service, if any, shall be limited to prescriptions for a drug that the
24 individual already has used for a minimum of three (3) months.

25 **27-20.9-6. Program review. --** The permanent joint committee on health care oversight
26 established by the provisions of section 40-8.4-14 of the state of Rhode Island general laws shall
27 review the Rhode Island Best Rx program on an annual basis to ensure it is meeting the goals of
28 the program, including consideration of the appropriateness of the dispensing fee and the
29 administrative fee charged participants, and any necessary revisions thereto. To the extent that
30 funds are available in the Rhode Island Best Rx program fund, the permanent joint committee on
31 health care oversight shall consider options for enhancing the assistance to participants, including
32 consideration of the appropriateness of paying the dispensing fee, administrative fee, and some
33 additional portion of the drug cost for the neediest participants out of program funds. For

1 purposes of this review the permanent joint committee on health care oversight shall receive, and
2 be guided by, the report of the advisory council established pursuant to section 27-20.9-16.

3 **27-20.9-7. Appropriations.** -- The director shall use available state general funds to
4 administer this program and to undertake outreach efforts to publicize the Rhode Island Best Rx
5 program. There is hereby authorized an appropriation of general funds for start up and
6 administration of the program. The director is authorized to accept grants and gifts for deposit
7 into the Rhode Island Best Rx program fund for the exclusive use of the program.

8 **27-20.9-8. Eligibility.** -- An individual who is a resident of this state is eligible to
9 participate in the Rhode Island Best Rx program if any of the following is true at the
10 commencement of the program year:

11 (a) The individual is over sixty (60) years of age;

12 (b) The individual is over fifty-five (55) years of age and is receiving Supplemental
13 Security Disability Income on account of total disability; or

14 (c) The individual or household has an annual income of two hundred and fifty percent
15 (250%) of the federal poverty level or less, which shall include all sources of income including
16 but not limited to wages, salaries, interest, and dividends; and

17 (1) the individual is not eligible and for the four (4) months prior to the application has
18 not been eligible for outpatient prescription drug coverage under a health benefits program paid
19 for in whole or in part by an employer, Medicaid, Medicare, or another state or federal health plan
20 or pharmaceutical assistance program that uses state or federal funds to pay part or all of the
21 individual's prescription drug costs. The four (4) month period shall not apply with respect to an
22 individual if:

23 (A) the health plan for which he or she has been eligible is terminated because of
24 bankruptcy of the sponsor or if pension benefits are required to be cut in a plan being managed
25 under ERISA protection;

26 (B) the individual has exhausted eligibility for Medicaid benefits;

27 (C) the individual has coverage for prescription drugs through a non-government
28 program that is subject to an annual cap on expenditures, and in the judgment of the department
29 based on information attested to in the application, is likely to have annual expenditures for
30 prescription drugs in excess of the annual cap. An individual is eligible for the program pursuant
31 to this paragraph only after prescription expenditures in the program year have exceeded the
32 insurance cap that is the basis for eligibility; or

33 (D) the individual is laid-off as a result of a plant or company closing or significant layoff
34 of more than fifty (50) workers.

1 **27-20.9-9. Enrollment. – Eligible programs.** -- (a) An individual seeking to participate
2 in the Rhode Island Best Rx program shall apply to the director on an annual basis, providing an
3 attestation of income, disability, and/or coverage status as appropriate to the eligibility category
4 for which application is made. False attestations shall be subject to the provisions of section 40-8-
5 9 of the Rhode Island general laws.

6 (b) Before enrolling the individual in the Rhode Island Best Rx program, the director
7 shall determine whether the individual is eligible to be enrolled in the Rhode Island Medicaid
8 program or any other state funded program offering prescription drug coverage, or is eligible for
9 subsidies to pay for coverage under the Medicare part D drug benefit;

10 (c) The department shall ensure that the Rhode Island Best Rx program is the payer of
11 last resort. No program funds pursuant to section 27-20.9-4 shall be expended where a
12 government or private payer has paid for a prescription.

13 **27-20.9-10. Fee.** -- Subject to manufacturer arrangements under subsection 27-20.9-
14 5(c)(3) and to any action taken pursuant to section 27-20.9-6, the amount payable to participating
15 pharmacies by the Rhode Island Best Rx program participants for a prescription shall be no
16 greater than the dispensing fee established under section 27-20.9-5 plus the discount price for the
17 drug established under section 27-20.9-5, plus an administrative fee of no more than one dollar
18 (\$1.00) per prescription, or if lower, the pharmacy's usual and customary charge for the drug.

19 **27-20.9-11. Claim submission.** -- (a) A participating pharmacy that charges a Rhode
20 Island Best Rx program participant a discount price for a prescription drug shall submit a claim to
21 the director verifying the quantity of each prescription drug dispensed to Rhode Island Best Rx
22 program participants by the participating pharmacy. The participating pharmacy shall use the
23 claim form or process established under section 27-20.9-5.

24 (b) Using claims submitted by a participating pharmacy under section 27-20.9-11, the
25 director shall reimburse a participating pharmacy the amount of the rebate a manufacturer has
26 agreed to pay for the prescription drug pursuant to a rebate agreement entered into under section
27 27-20.9-5 for each prescription drug the participating pharmacy has provided to a Rhode Island
28 Best Rx program participant at the discount price pursuant to section 27-20.9-10. The director
29 shall make the reimbursements and payments on a monthly basis.

30 **27-20.9-12. Information confidential.** -- (a) Notwithstanding any other provision of law,
31 information disclosed by manufacturers and by state employee health plans under this chapter is
32 confidential and shall not be disclosed by the director or a state agency (or contractor therewith)
33 in a form which discloses the identity of a specific manufacturer, prices charged for drugs by such
34 manufacturer or wholesaler, the identity of a specific state employee health plan (or its

1 contractor) or the payment methodologies or rebates of such plan, except:

2 (1) when the director determines it to be necessary to carry out this chapter; or

3 (2) to permit the attorney general to review the information provided.

4 All information provided by state employee health plans, pharmaceutical manufacturers and
5 pharmacists under this chapter shall be deemed a trade secret under chapter 6-41 of the general
6 laws and shall not be disclosed by the director or any other person pursuant to federal or state
7 trade secrets law.

8 (b) Information on claims submitted by participating pharmacies under section 27-20.9-
9 11 includes confidential patient information that shall be protected as provided under the privacy
10 regulations under the Health Insurance Portability and Accountability Act.

11 **27-20.9-13. Program rebates and audits.** -- Each manufacturer that sells outpatient
12 prescription drugs, whether branded or generic, may voluntarily enter into an agreement with the
13 director as provided in subsection 27-20.9-5(c).

14 (a) Where such an agreement provides for rebates, the director shall report to each
15 manufacturer in the standard reporting format established by the director, information on the total
16 number of units of each dosage form and strength and package size of each outpatient
17 prescription drug dispensed to the Rhode Island Best Rx program participants by participating
18 pharmacies after the implementation date of the Rhode Island Best Rx program.

19 (b) Rebate payments shall be due to the director not later than thirty (30) days after the
20 quarterly invoice is received by the participating manufacturer.

21 (c) The director shall permit a participating manufacturer to audit the information
22 provided (or required to be provided) under subsection 27-20.9-13(a), including reasonable
23 requests to audit participating pharmacies as may be appropriate to resolve disputes regarding
24 utilization data submitted for rebate payment. The director shall ensure that any adjustments are
25 made to reflect manufacturer and pharmacy agreements with the Rhode Island Best Rx program.

26 (d) The department may audit participating pharmacies to ensure the participating
27 manufacturer's discounts are appropriately passed on to the Rhode Island Best Rx program
28 participants. Audit reports shall be released to the legislature and to the public once a year.

29 **27-20.9-14. Duration of coverage.** -- The Rhode Island Best Rx program shall cover a
30 prescription drug for at least one year if the prescription drug is included in an agreement entered
31 into under section 27-20.9-5.

32 **27-20.9-15. Manufacturer participation.** -- Participation in the program by a
33 manufacturer is voluntary.

34 (a) Failure of a manufacturer to participate in the Rhode Island Best Rx program will not

1 result in prior authorization of drugs in the Medicaid program that would not otherwise be subject
2 to prior authorization but for the failure of the manufacturer to participate in the Rhode Island
3 Best Rx program.

4 (b) A state employee health plan or any other state funded prescription drug program may
5 not place a manufacturer's product on the prior authorization list or otherwise penalize or restrict
6 access to any of the manufacturer's product(s) in response to a manufacturer's failing to enter into
7 a rebate agreement under section 27-20.9-5.

8 (c) The program may not include the purchase of prescription drugs imported from
9 jurisdictions outside of the United States.

10 **27-20.9-16. Advisory Council.** – (a) There is hereby established the Rhode Island Best
11 Rx Program Advisory Council. The council shall advise the permanent joint committee on health
12 care oversight on the Rhode Island Best Rx program. With the approval of a majority of the
13 council's appointed members, the council may initiate studies to determine whether there are
14 more effective way to administer the program and provide the permanent joint committee on
15 health care oversight with suggestions for improvements. The council shall pay particular
16 attention to the dispensing fee and the administrative fee, with the objective of ensuring an
17 efficient program that offers the best value to program participants. The department, at its option,
18 may take notice of the recommendations and deliberations of the advisory council in exercising
19 its authority to operate the program.

20 (b) The advisory council shall have the following composition:

21 (1) A representative of organized labor appointed by the president of the Rhode Island
22 AFL-CIO;

23 (2) A representative of the Alliance for Retired Americans appointed by the executive
24 director;

25 (3) A representative of the American Association of Retired Persons appointed by the
26 executive director;

27 (4) A representative of retail pharmacists licensed and operating in the state of Rhode
28 Island, as appointed by the Rhode Island Pharmacists Association;

29 (5) Three representatives of the research-based pharmaceutical manufacturers;

30 (6) The speaker of the house; or his or her designee; and

31 (7) The president of the senate; or his or her designee.

32 (c) The speaker of the house; or his or her designee, and the president of the senate; or his
33 or her designee, shall co-chair the advisory council, and the council shall meet at the call of the
34 chair, but no less frequently than once per year.

1 (d) Council members in subsection (1) through (4) herein shall be appointed as above and
2 shall serve such terms as may be designated by their respective constituencies and shall receive
3 no compensation for their service.

4 (e) The director or designated representative of the department shall be a non-voting ex-
5 officio of the advisory council.

6 (f) A quorum for consideration of business is no fewer than five (5) voting members
7 present. Recommendations and report of the council shall be adopted by a two-thirds (2/3)
8 majority, and no minority reports shall be authorized.

9 **27-20.9-17. Rx Clearinghouse.** -- There is hereby established and Rx Clearinghouse
10 which shall be operated by the director. The Rx Clearinghouse shall serve as a central repository
11 of registration and application information for all public and private prescription drug benefits not
12 associated with a particular health plan or insurer, including, but not limited to, drug
13 manufacturer patient assistance program, prescription drug discount card programs, the Rhode
14 Island Rx Benefits Program, SCHIP, Medicare, and Medicaid.

15 (a) The Clearinghouse shall assist Rhode Island residents in identifying benefits for
16 which they may be eligible.

17 (b) Information disclosed by private entities, including, but not limited to, drug
18 manufacturers, during coordination and implementation of the Rx Clearinghouse shall be kept
19 confidential, except as the director determines is necessary to carry out the Clearinghouse. All
20 information received by the state or its contractors from a private entity for coordination under
21 the Rx Clearinghouse shall be exempt from disclosure.

22 (c) All individual identifying information relating to any patient or consumer pursuant to
23 the Rx Clearinghouse shall be kept confidential by the director, other state entities, and program
24 administrators for drug manufacturer's programs. The director shall obtain any authorization
25 from the patients or consumers necessary to assure uses of the information for the purpose of
26 administering the Rx Clearinghouse and making any referrals to manufacturer programs.

27 **27-20.9-18. Severability.** -- If any provision of this chapter is declared unconstitutional
28 or the applicability of this chapter to any person or circumstances is held invalid, the
29 constitutionality of the remainder of the chapter and the applicability of it to other persons and
30 circumstances shall not be affected by that invalidity.

31 SECTION 2. This act shall take effect on February 1, 2007.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO INSURANCE - THE RHODE ISLAND BEST RX PROGRAM

1 This act would create the Rhode Island Best Rx Program to provide prescription drug
2 assistance to the uninsured.

3 This act would take effect on February 1, 2007.

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