

2007 -- S 0593

=====
LC02106
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2007

A N A C T

RELATING TO INSURANCE - THE RHODE ISLAND BEST RX PROGRAM

Introduced By: Senators Moura, Perry, Paiva-Weed, and Maselli

Date Introduced: February 15, 2007

Referred To: Senate 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) "Designated PBM" means the entity designated under section 27-20.9-6 for a given
16 year.

17 (3) "Outpatient prescription drug" means a prescription drug that is prescribed for self-
18 administration by a patient that is dispensed by a participating pharmacy.

19 (4) "Participating manufacturer" means an entity that distributes generic or branded

1 pharmaceuticals and that enters into an agreement under section 27-20.9-5 to participate in the
2 Rhode Island Best Rx program.

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

6 (6) "Rx program participant" means an individual determined eligible for the Rhode
7 Island Rx program who has attested to meeting the eligibility requirements in accordance with
8 Section 8, and has been issued a Rhode Island Best Rx program enrollment card.

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

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

16 **27-20.9-4. Rx program fund.** -- There is hereby created in the state treasury the "Rhode
17 Island Best Rx Program Fund." The fund shall consist of rebates paid by manufactures pursuant
18 to agreements entered into under section 27-20.9-5, funds appropriated to the program, and any
19 gifts or grants to the program as provided in section 27-20.9-8, and investment earnings.
20 Investment earnings of the fund shall be credited to the fund. The director shall use money in the
21 fund to reimburse a participating pharmacy the amount of the manufacturer's discount off the
22 ingredient cost for an outpatient prescription drug that the participating pharmacy passes through
23 to a Rhode Island Best Rx program participant pursuant to section 4, and for bona fide
24 administrative costs of the program.

25 **27-20.9-5. Program established.** -- (a) There is hereby established a discount drug
26 program known as the "Rhode Island Best Rx program" to provide eligible uninsured persons
27 with access to discounts on outpatient prescription drugs from participating pharmaceutical
28 companies and pharmacists through a state-sponsored discount card program. The program
29 provides participants discounts on prescriptions comparable to or better, than the average
30 discounts available to state employees established through agreements with participating
31 pharmacists and manufacturers under this section, or at a manufacturer's option, an agreement to
32 coordinate enrollment in a pharmaceutical manufacturer's prescription drug assistance program
33 for the uninsured. In no case shall the state be obligated to reimburse for rebates in excess of the
34 amount received from the manufacturer.

1 (b) The entire rebate or discount on a drug offered by the Rhode Island Best Rx program
2 by a participating pharmaceutical manufacturer must be received by the Rx program participant.
3 The enrollee will receive the lowest price available, whether it is the Best RX price, the patient
4 assistance program price, or any special discounts offered by the pharmacy.

5 (c) Subject to subsection 27-20.9-5(e), the manufacturer of a specific drug product may
6 enter into an agreement with the director to offer any of the following to the Rhode Island Best
7 Rx program participants with respect to such drug;

8 (1) A rebate that is comparable to the average rebate payable on the product by the
9 manufacturer on prescriptions paid for under plans that provide benefits to public employees and
10 retirees in Rhode Island; or

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

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

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

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

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

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

28 (3) Subject to section 27-20.9-7, the dispensing fee payable to participating pharmacies
29 shall be two dollars and fifty cents (\$2.50), except as may be provided pursuant to an agreement
30 under subsection 27-20.9-5(d) or pursuant to subsection 27-20.9-5(f). The advisory council
31 established in section 27-20.19-17 of this act shall review annually the appropriateness of the
32 dispensing fee.

33 (4) An annual process for determining the discount price to be charged the Rhode Island
34 Best Rx program participants for the drug, except as may be provided pursuant to subdivision 27-

1 20.9-5(c)(3) which shall be equal to the ingredient cost cap minus the manufacturer discount,
2 established as follows:

3 (i) The ingredient cost cap for purposes of this section shall not be more than two percent
4 (2%) greater than the rate the designated PBM most commonly uses to reimburse retail
5 pharmacies in the state of Rhode Island, as verified in section 27-20.9-6. The director shall
6 establish on an annual basis the formula or other methodology used to determine the ingredient
7 cost cap for brand and generic drugs for purposes of this section.

8 (ii) The manufacturer discount to be subtracted from the ingredient cost cap for purposes
9 of this section shall be the amount for the drug as agreed by the manufacturer pursuant to
10 subdivision 27-20.9-6(1)(2). The director shall use the information provided pursuant to section
11 27-20.9-6 in its negotiation with the manufacturer of such drugs to attempt to improve the
12 benefits available to Best Rx enrollees.

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

16 (6) Arrangements for implementing an agreement entered into under subsection 27-20.9-
17 5(c), including a schedule for participating manufacturers to pay rebates to the director.

18 (7) Arrangements for verifying with the designated PBM the adequacy of the rebates and
19 ingredient cost rates established pursuant to this section.

20 (f) Subject to available funds, the director is authorized to contract with a third-party for
21 administration of all or part of the program. The director is authorized to consider arrangements
22 to include a mail service pharmacy option for program participants; provided, that no dispensing
23 fee shall be charged for mail service prescriptions; and provided, that the discount price charged
24 participants pursuant to section 27-20.9-11 is limited by mail service usual and customary prices.
25 The availability of mail service, if any, shall be limited to prescriptions for a drug that the
26 individual already has used for a minimum of three (3) months.

27 **27-20.9-6. Designated PBM.** – All contracts with the state for pharmacy benefit
28 management services shall ensure that the contracting entity, as a condition of receiving the
29 contract, shall agree to provide price consultation and verification services to the Best Rx
30 program, as provided in this section. Once each year, the director shall designate a pharmacy
31 benefit manager that it believes manages pharmacy benefits for the greatest number of Rhode
32 Island residents, or is otherwise appropriate for providing verification services to Best Rx to serve
33 as the Designated PBM.

34 (a) Once each year, the director shall consult with the Designated PBM concerning

1 proposed updated ingredient cost formula used in the Best Rx program, using the best
2 information available to the director.

3 (1) For single source drugs, the director shall submit the formula it uses to the Designated
4 PBM who shall certify whether or not the formula results in a pharmacy rate that is no more than
5 two percent (2%) higher than the rate most commonly used by the Designated PBM to reimburse
6 retail pharmacies.

7 (2) For generic drugs, the director shall compute the average per unit payment rate for the
8 top fifty (50) generic drugs and submits the list of drugs and the average payment as a percentage
9 discount off the average AWP for such drugs to the Designated PBM, which shall certify whether
10 or not it is more than two percent (2%) higher than the Designated PBM's average per unit
11 payment amount for the same fifty (50) generic drugs expressed as a percentage discount off the
12 average AWP for such drugs.

13 (b) No more frequently than once each year, the director shall identify a sample of no
14 more than twenty percent (20%) of the top fifty (50) drugs most-used by Best Rx enrollees for
15 which it has obtained a rebate agreement with a manufacturer.

16 (1) The director shall submit the rebate amount it obtained for each such drug to the
17 Designated PBM for verification. The Designated PBM shall certify to the director for each such
18 drug, whether the rebate obtained by the director is at least as large as the rebate negotiated by the
19 Designated PBM with the manufacturer for plans which do not use closed formularies, or if
20 lower, the Best Rx rebate is no more than two percent (2%) lower.

21 (2) The Designated PBM shall inform the director what percentage of the sample drugs
22 were subject to a rebate that met this criterion.

23 (c) The Designated PBM shall certify its responses to the director under this section,
24 signed by an officer of the PBM. If at any time, the director has a reasonable basis to believe that
25 the Designated PBM is not acting in good faith in certifying the rebate levels or providing
26 ingredient cost information, the director may confirm the validity of its rebate levels and
27 ingredient cost formulas by requesting the Designated PBM to provide for an audit, the relevant
28 contracts of the Designated PBM by a third party auditor satisfactory to the director.

29 **27-20.9-7. Program review.** -- The permanent joint committee on health care oversight
30 established by the provisions of section 40-8.4-14 of the state of Rhode Island general laws shall
31 review the Rhode Island Best Rx program on an annual basis to ensure it is meeting the goals of
32 the program, including consideration of the appropriateness of the dispensing fee and the
33 administrative fee charged participants, and any necessary revisions thereto. To the extent that
34 funds are available in the Rhode Island Best Rx program fund, the permanent joint committee on

1 health care oversight shall consider options for enhancing the assistance to participants, including
2 consideration of the appropriateness of paying the dispensing fee, administrative fee, and some
3 additional portion of the drug cost for the neediest participants out of program funds. For
4 purposes of this review the permanent joint committee on health care oversight shall receive, and
5 be guided by, the report of the advisory council established pursuant to section 27-20.9-17.

6 **27-20.9-8. Appropriations.** -- The director shall use available state general funds to
7 administer this program and to undertake outreach efforts to publicize the Rhode Island Best Rx
8 program. There is hereby authorized an appropriation of general funds for start up and
9 administration of the program. The director is authorized to accept grants and gifts for deposit
10 into the Rhode Island Best Rx program fund for the exclusive use of the program.

11 **27-20.9-9. Eligibility.** -- An individual who is a resident of this state is eligible to
12 participate in the Rhode Island Best Rx program if any of the following is true at the
13 commencement of the program year:

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

15 (b) The individual is receiving Supplemental Security Disability Income on account of
16 total disability; or

17 (c) The individual or household has an annual income of two hundred and fifty percent
18 (250%) of the federal poverty level or less, which shall include all sources of income including
19 but not limited to wages, salaries, interest, and dividends; and

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

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

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

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

1 insurance cap that is the basis for eligibility; or

2 (D) the individual is laid-off as a result of a plant or company closing or significant
3 layoff.

4 **27-20.9-10. Enrollment. – Eligible programs.** -- (a) An individual seeking to participate
5 in the Rhode Island Best Rx program shall apply to the director on an annual basis, providing an
6 attestation of income, disability, and/or coverage status as appropriate to the eligibility category
7 for which application is made. False attestations shall be subject to the provisions of section 40-8-
8 9 of the Rhode Island general laws.

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

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

16 **27-20.9-11. Fee.** -- Subject to manufacturer arrangements under subdivision 27-20.9-
17 5(c)(3) and to any action taken pursuant to section 27-20.9-7, the amount payable to participating
18 pharmacies by the Rhode Island Best Rx program participants for a prescription shall be no
19 greater than the dispensing fee established under section 27-20.9-5 plus the discount price for the
20 drug established under section 27-20.9-5, plus an administrative fee of no more than one dollar
21 (\$1.00) per prescription, or if lower, the pharmacy's usual and customary charge for the drug.

22 **27-20.9-12. Claim submission.** -- (a) A participating pharmacy that charges a Rhode
23 Island Best Rx program participant a discount price for a prescription drug shall submit a claim to
24 the director verifying the quantity of each prescription drug dispensed to Rhode Island Best Rx
25 program participants by the participating pharmacy. The participating pharmacy shall use the
26 claim form or process established under section 27-20.9-5.

27 (b) Using claims submitted by a participating pharmacy under section 27-20.9-12, the
28 director shall reimburse a participating pharmacy the amount of the rebate a manufacturer has
29 agreed to pay for the prescription drug pursuant to a rebate agreement entered into under section
30 27-20.9-5 for each prescription drug the participating pharmacy has provided to a Rhode Island
31 Best Rx program participant at the discount price pursuant to section 27-20.9-11. The director
32 shall make the reimbursements and payments on a monthly basis.

33 **27-20.9-13. Information confidential.** -- (a) The information disclosed by the director to
34 the Designated PBM is confidential, trade secret information. The Designated PBM shall not

1 disclose it to anyone other than the director, and it may not be used by the Designated PBM for
2 any purpose other than is required by this statute. All copies of such information shall be
3 returned or destroyed at the conclusion of the verification process.

4 (b) Notwithstanding any other provision of law, information disclosed by manufacturers
5 and by the Designated PBM under this chapter is confidential and shall not be disclosed by the
6 director or a state agency (or contractor therewith) in a form which discloses the identity of a
7 specific manufacturer, prices charged for drugs by such manufacturer or wholesaler, or the
8 payment methodologies or rebates of the Designated PBM, except:

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

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

11 All information provided by the Designated PBM, pharmaceutical manufacturers and pharmacists
12 under this chapter shall be deemed a trade secret under chapter 6-41 of the general laws and shall
13 not be disclosed by the director or any other person pursuant to federal or state trade secrets law.

14 (c) Information on claims submitted by participating pharmacies under section 27-20.9-
15 12 includes confidential patient information that shall be protected as provided under the privacy
16 regulations under the Health Insurance Portability and Accountability Act.

17 **27-20.9-14. Program rebates and audits.** -- Each manufacturer that sells outpatient
18 prescription drugs, whether branded or generic, may voluntarily enter into an agreement with the
19 director as provided in subsection 27-20.9-5(c).

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

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

27 (c) The director shall permit a participating manufacturer to audit the information
28 provided (or required to be provided) under subsection 27-20.9-14(a), including reasonable
29 requests to audit participating pharmacies as may be appropriate to resolve disputes regarding
30 utilization data submitted for rebate payment. The director shall ensure that any adjustments are
31 made to reflect manufacturer and pharmacy agreements with the Rhode Island Best Rx program.

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

1 **27-20.9-15. Duration of coverage.** -- The Rhode Island Best Rx program shall cover a
2 prescription drug for at least one year if the prescription drug is included in an agreement entered
3 into under section 27-20.9-5.

4 **27-20.9-16. Manufacturer participation.** -- Participation in the program by a
5 manufacturer is voluntary.

6 (a) Failure of a manufacturer to participate in the Rhode Island Best Rx program will not
7 result in prior authorization of drugs in the Medicaid program that would not otherwise be subject
8 to prior authorization but for the failure of the manufacturer to participate in the Rhode Island
9 Best Rx program.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 **27-20.9-18. Rx Clearinghouse. --** There is hereby established and Rx Clearinghouse
16 which shall be operated by the director. The Rx Clearinghouse shall serve as a central repository
17 of registration and application information for all public and private prescription drug benefits not
18 associated with a particular health plan or insurer, including, but not limited to, drug
19 manufacturer patient assistance program, prescription drug discount card programs, the Rhode
20 Island Rx Benefits Program, SCHIP, Medicare, and Medicaid.

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

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

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

33 **27-20.9-19. Severability. --** If any provision of this chapter is declared unconstitutional
34 or the applicability of this chapter to any person or circumstances is held invalid, the

1 [constitutionality of the remainder of the chapter and the applicability of it to other persons and](#)
2 [circumstances shall not be affected by that invalidity.](#)

3 SECTION 2. This act shall take effect on July 1, 2007.

=====
LC02106
=====

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 July 1, 2007.

=====
LC02106
=====