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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. 2025

A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT -- THE RHODE ISLAND HEALTH CARE REFORM ACT OF 2024 -- HEALTH INSURANCE OVERSIGHT

Introduced By: Representatives Potter, Kislak, McGaw, Donovan, Giraldo, Speakman, Cotter, Bennett, Tanzi, and Handy
Date Introduced: February 26, 2025

Referred To: House Health & Human Services

It is enacted by the General Assembly as follows:

SECTION 1. Section 42-14.5-2.1 of the General Laws in Chapter 42-14.5 entitled "The Rhode Island Health Care Reform Act of 2004 — Health Insurance Oversight" is hereby amended to read as follows:

42-14.5-2.1. Definitions.

As used in this chapter:

(1) “Accountability standards” means measures including service processes, client and population outcomes, practice standard compliance and fiscal integrity of social and human service providers on the individual contractual level and service type for all state contacts of the state or any subdivision or agency to include, but not limited to, the department of children, youth and families (DCYF), the department of behavioral healthcare, developmental disabilities and hospitals (BHDDH), the department of human services (DHS), the department of health (DOH), and Medicaid. This may include mandatory reporting, consolidated, standardized reporting, audits regardless of organizational tax status, and accountability dashboards of aforementioned state departments or subdivisions that are regularly shared with the public.

(2) "Consumer Price Index" means the Consumer Price Index, Annual Average, for all Urban Consumers, CPI-U: US City Average, All Items, reported by the United States Department of Labor, Bureau of Labor Statistics, or its successor or, if the index is discontinued, an equivalent index reported by a federal authority or, if no such index is reported, "Consumer Price Index" means

a comparable index chosen by the Bureau of Labor Statistics.

(3) “Executive Office of Health and Human Services (EOHHS)” means the department that serves as “principal agency of the executive branch of state government” (§ 42-7.2-2) responsible for managing the departments and offices of: health (RIDOH), human services (DHS), healthy aging (OHA), veterans services (VETS), children, youth and families (DCYF), and behavioral healthcare, developmental disabilities and hospitals (BHDDH). EOHHS is also designated as the single state agency with authority to administer the Medicaid program in Rhode Island.

(4) "Identified drug" means any prescription drug that has at any time been identified as having an unsupported price increase.

(5) "Prescription drug" has the same meaning as prescription as defined in § 23-25.3-3.

~~(3)~~(6) “Rate review” means the process of reviewing and reporting of specific trending factors that influence the cost of service that informs rate setting.

~~(4)~~(7) “Rate setting” means the process of establishing rates for social and human service programs that are based on a thorough rate review process.

~~(5)~~(8) “Social and human service program” means a social, mental health, developmental disability, child welfare, juvenile justice, prevention services, habilitative, rehabilitative, substance use disorder treatment, residential care, adult or adolescent day services, vocational, employment and training, or aging service program or accommodations purchased by the state.

~~(6)~~(9) “Social and human service provider” means a provider of social and human service programs pursuant to a contract with the state or any subdivision or agency to include, but not be limited to, the department of children, youth and families (DCYF), the department of behavioral healthcare, developmental disabilities and hospitals (BHDDH), the department of human services (DHS), the department of health (DOH), and Medicaid.

~~(7)~~(10) “State government and the provider network” refers to the contractual relationship between a state agency or subdivision of a state agency and private companies the state contracts with to provide the network of mandated and discretionary social and human services.

(11) "Unsupported price increase" means an increase in price for a prescription drug for which there was no, or inadequate, new clinical evidence to support the price increase. In order to determine whether a price increase for a prescription drug is unsupported by new clinical evidence, the state shall utilize and rely upon the analyses of prescription drugs prepared annually by the Institute for Clinical and Economic Review (ICER) and published in its annual unsupported price increase report.

(12) "Wholesale acquisition cost" has the meaning set forth in 42 U.S.C. § 1395w-

3a(c)(6)(B).

SECTION 2. Chapter 42-14.5 of the General Laws entitled "The Rhode Island Health Care Reform Act of 2004 — Health Insurance Oversight" is hereby amended by adding thereto the following section:

42-14.5-6. Penalty imposed and collection power.

(a) A penalty shall be assessed on the sales within the state of identified drugs and payable by the manufacturers of the identified drugs. The penalty shall be calculated as described in subsection (a)(1) of this section.

(1) The penalty in any calendar year shall equal eighty percent (80%) of the difference between the revenue generated by sales within the state of the identified drugs and the revenue that would have been generated if the manufacturer had maintained the wholesale acquisition cost from the previous calendar year, adjusted for inflation utilizing the Consumer Price Index.

(2) In order to be subject to the penalty a manufacturer shall have at least two hundred fifty thousand dollars ($250,000) in total annual sales within the state in the calendar year for which the penalty is assessed.

(3) Within sixty (60) days of the annual publication by ICER of the unsupported price increase report, the commissioner shall identify the manufacturers of identified drugs. The commissioner shall notify each manufacturer that sales within the state of identified drugs shall be subject to the penalty assessed in this section for a period of two (2) calendar years following the identified drug’s appearance in the annual publication by ICER.

(4) Such penalty shall be collected annually. Any manufacturer notified by the commissioner pursuant to subsection (a)(3) of this section, shall submit to the commissioner a return on a form prescribed and furnished by the commissioner and pay the penalty by April 15 for the previous calendar year.

(5) The form described in subsection (a)(4) of this section shall contain information including, but not limited to:

(i) The total amount of sales of the identified drug within the state;

(ii) The total number of units sold of the identified drug within the state;

(iii) The wholesale acquisition cost of the identified drug during the tax period and any changes in the wholesale acquisition cost during the calendar year;

(iv) The wholesale acquisition cost during the previous calendar year;

(v) A calculation of the penalty owed; and

(vi) Any other information that the commissioner determines is necessary to calculate the correct amount of the penalty owed.

(6) The commissioner may request any agency to assist in calculation of the penalty and collection, including the tax administrator, who may collect the contribution with interest in the same manner and with the same powers as are prescribed for collection of taxes in title 44.

(b) Use of revenue.

(1) The payments required by this section may be made by electronic transfer of monies to the general treasurer.

(2) The general treasurer shall take all steps necessary to facilitate the transfer of monies to a restricted receipt account and made available to the office of the health insurance commissioner to offset costs to assess and collect the penalty, audit manufacturers that are required to submit returns pursuant to this section, and defend appeals from manufacturers. The balance shall be deposited in the general fund.

(c) Prohibition on withdrawal of prescription drugs for sale.

(1) It shall be a prohibition of this chapter for any manufacturer or distributor of an identified drug to withdraw that drug from sale or distribution within this state for the purpose of avoiding the penalty set forth in this section.

(2) Any manufacturer who intends to withdraw an identified drug from sale or distribution from within the state in order to avoid a penalty as described in this section shall provide a notice of withdrawal in writing to the board of pharmacy and to the attorney general at a minimum of one hundred eighty (180) days prior to such withdrawal.

(3) The attorney general shall assess a penalty of five hundred thousand dollars ($500,000) on any entity, including any manufacturer or distributor of an identified drug, that it determines has withdrawn an identified drug from distribution or sale in the state in violation of this section.

(d) Hearing by commission on application and appeals.

(1) Any manufacturer aggrieved by the action of the commissioner in determining the amount of any penalty imposed under the provisions of this section may apply to the commissioner, within thirty (30) days after the notice of the action is mailed to it, for a hearing relative to the penalty. The commissioner shall fix a time and place for the hearing and shall so notify the manufacturer. Upon the hearing the commissioner shall correct manifest errors, if any, disclosed at the hearing and thereupon assess and collect the amount lawfully due together with any penalty or interest thereon.

(2) Appeals from administrative orders or decisions made pursuant to any provisions of this section shall be pursued pursuant to chapter 35 of title 42 ("administrative procedures"). The right to appeal under this section shall be expressly made conditional upon prepayment of all contributions, interest, and penalties unless the manufacturer demonstrates to the satisfaction of the

court that the manufacturer has a reasonable probability of success on the merits and is unable to prepay all contributions, interest, and penalties, considering not only the manufacturer's own financial resources, but also the ability of the manufacturer to borrow the required funds. If the court, after appeal, holds that the manufacturer is entitled to a refund, the manufacturer shall also be paid interest on the amount at the rate provided in § 44-1-7.1, as amended.

SECTION 3. This act shall take effect upon passage.

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EXPLANATION

BY THE LEGISLATIVE COUNCIL

OF

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RELATING TO STATE AFFAIRS AND GOVERNMENT -- THE RHODE ISLAND HEALTH CARE REFORM ACT OF 2024 -- HEALTH INSURANCE OVERSIGHT

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This act would regulate price increases for prescription drugs. Any unsupported price increase of a prescription drug would be subject to a penalty equal to eight percent (80%) of the difference between the revenue generated by the sales of the prescription drug and the revenue that would have been generated if the manufacturer had maintained the wholesale acquisition cost from the previous calendar year, adjusted appropriately for inflation. Manufacturers would be prohibited from withdrawing a prescription drug from sale or distribution for the sole purpose of avoiding the penalty of a price increase.

This act would take effect upon passage.

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