

**2023 -- S 0098 SUBSTITUTE A**

LC000307/SUB A

**STATE OF RHODE ISLAND**

**IN GENERAL ASSEMBLY**

**JANUARY SESSION, A.D. 2023**

**A N A C T**

**RELATING TO FOOD AND DRUGS -- PRESCRIPTION DRUG COST PROTECTION**

Introduced By: Senators DiPalma, Miller, Pearson, DiMario, Valverde, and Goodwin

Date Introduced: February 01, 2023

Referred To: Senate Health & Human Services

It is enacted by the General Assembly as follows:

1 SECTION 1. Legislative Intent.

2 (1) The purpose of this chapter is to protect the safety, health, and economic well-being of  
3 Rhode Island residents by safeguarding them from the negative and harmful impact of excessive  
4 and unconscionable prices for prescription drugs. In enacting this act, the legislature finds that  
5 access to prescription drugs is necessary for Rhode Island residents to maintain or achieve good  
6 health:

7 (i) Excessive prices negatively impact the ability of Rhode Island residents to obtain  
8 prescription drugs and price increases that exceed reasonable levels thereby endanger the health  
9 and safety of Rhode Island residents to maintain or achieve good health;

10 (ii) Excessive prices for prescription drugs threaten the economic well-being of Rhode  
11 Island residents and endanger their ability to pay for other necessary and essential goods and  
12 services including housing, food and utilities;

13 (iii) Excessive prices for prescription drugs contribute significantly to a dramatic and  
14 unsustainable rise in health care costs and health insurance that threaten the overall ability of Rhode  
15 Island residents to obtain health coverage and maintain or achieve good health;

16 (iv) Excessive prices for prescription drugs contribute significantly to rising state costs for  
17 health care provided and paid for through health insurance programs for public employees,  
18 including employees of the state, municipalities and counties, school districts, institutions of higher  
19 education, and retirees whose health care costs are funded by public programs, thereby threatening

1 the ability of the state to fund those programs adequately and further threatening the ability of the  
2 state to fund other programs necessary for the public good and safety, such as public education and  
3 public safety; and

4 (v) Based on findings in subsections (i) through (iv) of this section, the legislature finds  
5 that excessive prices for prescription drugs threaten the safety and well-being of Rhode Island  
6 residents and find it is necessary to act in order to protect Rhode Island residents from the negative  
7 impact of excessive costs.

8 SECTION 2. Title 21 of the General Laws entitled "FOOD AND DRUGS" is hereby  
9 amended by adding thereto the following chapter:

10 CHAPTER 38

11 PRESCRIPTION DRUG COST PROTECTION

12 **21-38-1. Definitions.**

13 As used in this chapter:

14 (1) "ERISA Plan" means a plan qualified under the Employee Retirement Income Security  
15 Act of 1974.

16 (2) "Health Plan" means any entity subject to the insurance laws and regulations of this  
17 state, or subject to the jurisdiction of the commissioner, that contracts or offers to contract to  
18 provide, deliver, arrange for, pay for, or reimburse any of the costs of healthcare services, including,  
19 without limitation, an insurance company offering accident and sickness insurance, a health  
20 maintenance organization licensed under chapter 41 of title 27, a nonprofit hospital service  
21 corporation organized under chapter 19 of title 27, a nonprofit medical service corporation  
22 organized under chapter 20 of title 27, a nonprofit dental service corporation organized under  
23 chapter 41 of title 20.1, a nonprofit optometric service corporation organized under chapter 20.2 of  
24 title 27, a domestic insurance company subject to chapter 1 of title 27 that offers or provides health  
25 insurance coverage in the state, and a foreign insurance company subject to chapter 2 of title 27  
26 that offers or providers health insurance coverage in the state.

27 (3) "Maximum fair price" means the maximum rate for a drug published by the Secretary  
28 of the United States Department of Health and Human Services pursuant to Section 1195 of P.L.  
29 117-169 (2022).

30 (4) "Participating ERISA plan" means an ERISA plan that has elected to participate in the  
31 requirements and restrictions of this subchapter as described in § 21-38-4.

32 (5) "Price applicability period" means the period of time defined in Section 1191 of P.L.  
33 117-169 (2022)

34 (6) "Referenced drug" means a drug subject to a maximum fair price.

1 (7) “State entity” means any agency of state government that purchases prescription drugs  
2 on behalf of the state for a person whose health care is paid for by the state, including any agent,  
3 vendor, fiscal agent, contractor, or other party acting on behalf of the state. State entity does not  
4 include the medical assistance program established under 42 U.S.C. §1396 et seq.

5 **21-38-2. Payment in excess of referenced rate prohibited.**

6 (a) The maximum fair price is the maximum payment for a referenced drug and applies to  
7 all purchases of a referenced drug and reimbursements for a claim for the referenced drug during  
8 the price applicability period when the referenced drug is dispensed, delivered, or administered to  
9 an individual in the state in person, by mail, or by other means

10 (b) It is a violation of this chapter for any purchaser to purchase a referenced drug or seek  
11 reimbursement for a referenced drug to be dispensed, delivered, or administered to an individual in  
12 the state in person, by mail, or by other means for a cost higher than the maximum fair price. The  
13 maximum fair price does not include a dispensing fee paid to a pharmacy for dispensing a  
14 referenced drug and nothing in this chapter shall be interpreted to prevent a retail pharmacy from  
15 receiving a dispensing fee above the maximum fair price.

16 **21-38-3. ERISA plan opt-in.**

17 An ERISA plan may elect to participate in the provisions of this chapter. Any ERISA plan  
18 that desires its purchase of prescription drugs to be subject to the prohibition described in § 21-38-  
19 3 shall notify the insurance commissioner in writing by February 1 of each year.

20 **21-38-4. Rulemaking authority.**

21 The insurance commissioner shall have the authority to implement regulations pursuant to  
22 chapter 35 of title 42 ( "administrative procedures") to fully implement the requirements of this  
23 chapter.

24 **21-38-5. Registered agent and office within the state.**

25 Any entity that sells, distributes, delivers, or offers for sale any drug in the state is required  
26 to maintain a registered agent and office within the state.

27 **21-38-6. Use of savings.**

28 (a) Any savings generated as a result of the requirements in §21-38-3 during the referenced  
29 rate applicability period above must be used to reduce costs to consumers. Any state entity, health  
30 plan or participating ERISA plan must calculate such savings and utilize such savings directly to  
31 reduce costs for its members. In determining how to utilize savings in order to comply with this  
32 provision, purchasers are directed to consider strategies that promote greater health equity by  
33 addressing disparities across communities.

34 (b) No later than April 1 of each calendar year, each state entity, health plan and

1 participating ERISA plan subject to this chapter shall submit to the insurance commissioner a report  
2 describing the savings achieved for each referenced drug for the previous calendar year and how  
3 those savings were used to achieve the requirements of subsection (a) of this section, including how  
4 the savings were used to promote greater health equity by addressing disparities across  
5 communities.

6 (c) The insurance commissioner shall implement rules setting forth the method for  
7 calculating savings and the format and submission requirements for the report described in  
8 subsection (b) of this section.

9 **21-38-7. Enforcement.**

10 Each violation of this chapter shall be subject to a fine of one thousand dollars (\$1,000).  
11 Every individual transaction in violation of § 21-38-3 is determined to be a separate violation. The  
12 attorney general is authorized to enforce the provisions of this statute. The refusal of a manufacturer  
13 or distributor to negotiate in good faith as described in § 21-38-8(d) shall be a valid affirmative  
14 defense in any enforcement action brought under this chapter.

15 **21-38-8. Prohibition on withdrawal of referenced drugs for sale.**

16 (a) It shall be a violation of this chapter for any manufacturer or distributor of a referenced  
17 drug to withdraw that drug from sale or distribution within this state for the purpose of avoiding  
18 the impact of the rate limitations set forth in § 21-38-3.

19 (b) Any manufacturer that intends to withdraw a referenced drug from sale or distribution  
20 from within the state shall provide a notice of withdrawal in writing to the insurance commissioner  
21 and to the attorney general one hundred eight (180) days prior to such withdrawal.

22 (c) The insurance commissioner shall assess a penalty on any manufacturer or distributor  
23 that it determines has withdrawn a referenced drug from distribution or sale in the state in violation  
24 of subsection (a) or (b) of this section. With respect to each referenced drug for which the insurance  
25 commissioner has determined the manufacturer or distributor has withdrawn from the market, the  
26 penalty shall be equal to:

27 (1) Five hundred thousand dollars (\$500,000); or

28 (2) The amount of annual savings determined by the insurance commissioner as described  
29 in § 21-38-6, whichever is greater.

30 (d) It shall be a violation of this chapter for any manufacturer or distributor of a referenced  
31 drug to refuse to negotiate in good faith with any payor or seller of prescription drugs a price that  
32 is within the referenced rate as determined in § 21-38-2.

33 (e) The insurance commissioner shall assess a penalty on any manufacturer or distributor  
34 that it determines has failed to negotiate in good faith in violation of § 21-38-7. With respect to

1 each referenced drug for which the insurance commissioner has determined the manufacturer or  
2 distributor has failed to negotiate in good faith, the penalty shall be equal to:

3 (1) Five hundred thousand dollars (\$500,000); or

4 (2) The amount of annual savings determined by the insurance commissioner as described  
5 in § 21-38-6, whichever is greater.

6 **21-38-9. Severability clause.**

7 If any provision of this chapter or the application thereof is determined to be invalid, the  
8 invalidity does not affect other provisions or applications of this chapter which can be given effect  
9 without the invalid provision or application, and to this end the provisions of this chapter are  
10 severable.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
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1           This act would prohibit the state, participating ERISA or any health plan from purchasing  
2           referenced drugs for a cost higher than the referenced rate.

3           This act would take effect upon passage.

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