

2018 -- S 2532

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2018

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A N A C T

RELATING TO INSURANCE -- PRESCRIPTION DRUG BENEFITS--PRESCRIPTION
DRUG MARKETING

Introduced By: Senators Miller, Goldin, Calkin, Satchell, and Raptakis

Date Introduced: March 01, 2018

Referred To: Senate Health & Human Services

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 27-20.8 of the General Laws entitled "Prescription Drug Benefits"
2 is hereby amended by adding thereto the following section:

3 **27-20.8-3. Fair marketing of prescription drugs.**

4 (a) Legislative purpose. Health insurance premiums are increasing in large part due to
5 prescription drug expenses. Drug manufacturers employ direct-to-consumer marketing schemes,
6 including coupons, discount cards, and similar offers, to disguise the true costs of high priced
7 drugs. Controlling the application of these marketing programs, especially when lower cost
8 alternatives are available, will help eliminate an expense that drives up the cost of health care for
9 Rhode Islanders. These marketing schemes are prohibited for Medicare, Medicaid, and other
10 federally-funded programs because they increase the costs to those programs. Similar protections
11 should be provided for those paying the premiums for commercial coverage. Furthermore, where
12 the drug makers are willing to offer these "discounts" to patients with insurance, they should
13 provide similar assistance to help those patients without coverage. This section addresses those
14 cost issues.

15 (b) A person who manufactures a prescription drug who offers or makes available to an
16 insured in this state any discount, repayment, product voucher, or similar mechanism that
17 provides a reduction in an individual's out-of-pocket expenses associated with their health
18 insurance, shall permit such mechanism to be used by a person without health insurance coverage

1 for that prescription drug.

2 (c) A person who manufactures a prescription drug who offers or makes available to an
3 insured in this state any discount, repayment, product voucher, or similar mechanism, shall
4 publish on the discount card, coupon, voucher, or similar material, and on any accompanying
5 advertisement and website, in an easily readable font and understandable format, a message that a
6 generic alternative has been approved by the United States Food and Drug Administration (FDA),
7 that the generic may be available at a lower price, and instructions for the dispensing pharmacist
8 to inform the person obtaining the prescription about any generic alternative.

9 (1) For the purpose of this section, a "generic alternative" means a drug designated to be
10 therapeutically equivalent as indicated by the FDA's "Approved Drug Products with Therapeutic
11 Equivalence Evaluations." Subsection (c) of this section shall not apply to a branded prescription
12 drug until the time that the first drug designated in the FDA's "Approved Drug Products with
13 Therapeutic Equivalence Evaluations" as therapeutically equivalent to that branded prescription
14 drug has been nationally available, or, the active ingredients of the drug are contained in products
15 regulated by the FDA, are available without prescription at a lower cost, and are not otherwise
16 contraindicated for treatment of the condition for which the prescription drug is approved.

17 (d) A health plan shall be permitted to adopt a variable copayment and/or out-of-pocket
18 maximum calculation process. Notwithstanding any state law to the contrary, and to the extent
19 permissible by federal law, a health plan may:

20 (1) Adopt a cost sharing method that provides for an adjustment to the cost sharing to
21 reflect the full value of a discount, repayment, product voucher or similar mechanism; and/or

22 (2) Adopt a method to calculate the out-of-pocket maximum that only accumulates
23 toward the maximum those payments made by the insured and not those made by a drug
24 manufacturer via such mechanisms.

25 (e) This section does not prohibit or in any way restrict an entity, including an entity that
26 manufactures prescription drugs or a patient assistance program that is solely funded by one or
27 more manufacturers, from offering a pharmaceutical product free of any cost, if the product is
28 free of cost to both the patient and the patient's health insurance carrier.

29 (f) This section does not prohibit or in any way restrict a discount, repayment, product
30 voucher, or other reduction in an individual's out-of-pocket expenses that is not associated with
31 the individual's health insurance and the individual's health insurance is not paying any portion of
32 the cost of the prescription drug.

33 SECTION 2. This act shall take effect on January 1, 2019.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO INSURANCE -- PRESCRIPTION DRUG BENEFITS--PRESCRIPTION
DRUG MARKETING

1 This act would regulate the marketing of prescription drug manufacturers using direct-to-
2 consumer marketing schemes including coupons, discount cards and similar offers to disguise the
3 true costs of high priced drugs as opposed to lower cost alternatives and making these discounts
4 available to individuals without health insurance.

5 This act would take effect on January 1, 2019.

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