

1 these excessive drug prices have the effect of denying residents access to medically necessary
2 care, thereby threatening their health and safety.

3 (5) Among these uninsured and underinsured residents, many require repeated doctor or
4 medical clinic appointments; having gotten sicker because they cannot afford to take the drugs
5 prescribed for them. Many are admitted to or treated at hospitals each year because they cannot
6 afford the drugs prescribed for them; drugs which could have prevented or alleviated the need for
7 such hospitalization. Many others enter expensive institutional care settings because they cannot
8 afford the prescription drugs that could have supported them outside of an institution. In each of
9 these circumstances, uninsured and underinsured residents too often become medicaid recipients
10 because of their inability to afford prescription drugs. Helping secure lower drug prices for the
11 uninsured and underinsured directly benefits and supports medicaid.

12 (6) The state government can play an effective role as a market participant on behalf of
13 all residents who are uninsured, underinsured or are medicaid beneficiaries. The state already
14 provides drugs and acts as a prescription benefits manager for a variety of programs, and should
15 expand that role to negotiate voluntary drug rebates; using these funds to maintain and expand
16 medicaid services while offering lower drug prices to the uninsured and underinsured who do not
17 qualify for medicaid.

18 (b) Purpose. Recognizing that the state already acts as a prescription benefits manager
19 for a variety of health plans and assistance programs, this law is enacted to cover new populations
20 by expanding the state's role as a participant in the prescription drug marketplace, negotiating
21 voluntary rebates from drug companies, and using the funds to make prescription drugs more
22 affordable to the state medicaid program and to state residents. Such a program shall improve
23 public health and welfare, promote the economic strength of our society, and both directly and
24 indirectly benefit the state medicaid program.

25 **23-77-3. Fair market drug pricing.** – (a) Definitions. -- As used in this chapter:

26 (1) “Director” means the director of the department of human services or the director’s
27 designee(s).

28 (2) “Department” means the department of human services.

29 (3) “Manufacturer” means a manufacturer of prescription drugs as defined in 42 U.S.C.
30 section 1396r-8 (k) (5), including a subsidiary or affiliate of a manufacturer.

31 (4) “Labeler” means an entity or person that receives prescription drugs from a
32 manufacturer or wholesaler and repackages those drugs for later retail sale, and that has a labeler
33 code from the federal food and drug administration under 21 code of federal regulations, 207.20
34 (1999).

1 (5) “Participating retail pharmacy” means a retail pharmacy or other business licensed to
2 dispense prescription drugs in this state that (i) participates in the state medicaid program, or (ii)
3 voluntarily agrees to participate in the Rx card program.

4 (6) “Wholesaler” means a business licensed to distribute prescription drugs in this state.

5 (b) Negotiated drug discounts and rebates. –

6 (1) Drug discount and rebate agreements. The director shall negotiate discount prices or
7 rebates for prescription drugs from drug manufacturers and labelers. A drug manufacturer or
8 labeler that sells prescription drugs in this state may voluntarily elect to negotiate: (i)
9 supplemental rebates for the medicaid program over and above those required under 42 U.S.C.
10 section 1396r-8; (ii) discount prices or rebates for the Rx card program; and (iii) discount prices
11 or rebates for any other state programs that pay for or acquire prescription drugs.

12 (2) Rebate amounts. In negotiating rebate terms, the director shall take into consideration:
13 the rebate calculated under the medicaid rebate program pursuant to 42 U.S.C. section 1396r-8;
14 the price provided to eligible entities under 42 U.S.C. section 256b; and any other available
15 information on prescription drug prices, discounts and rebates.

16 (3) Failure to agree.

17 (i) The director shall prompt a review of whether to place a manufacturer’s or labeler’s
18 products on the prior authorization list for the state medicaid program and take similar actions
19 involving prior authorization or formularies for any other state-funded or operated prescription
20 drug program, if:

21 (A) the director and a drug manufacturer or labeler fail to reach agreement on the terms
22 of a supplemental medicaid rebate or a discount or rebate for the Rx card program; and

23 (B) the discounts or rebates offered by the manufacturer or labeler are not as favorable to
24 the state as the prices provided to eligible entities under 42 U.S.C. section 256b.

25 (ii) Any prior authorization must meet the requirements of 42 U.S.C. section 1396r-
26 8(d)(5) and be done in accordance with existing state law. The director shall promulgate rules
27 creating clear procedures for the implementation of this section.

28 (iii) The names of manufacturers and labelers that do not enter into rebate agreements are
29 public information and the department shall release this information to the public and actively
30 distribute it to doctors, pharmacists, and other health professionals.

31 (c) Rx card. –

32 (1) Rx card program established. The department shall establish the Rx card program as a
33 state pharmaceutical assistance program under 42 U.S.C. section 1396r-8(c)(1)(C)(i)(III), to
34 provide discounts to participants for drugs covered by a rebate agreement. Using sums from

1 negotiated rebates, the department shall contract with wholesalers and/or participating retail
2 pharmacies to deliver discounted prices to Rx card participants.

3 (2) Amount of discount. The drug discounts received by Rx card participants shall be
4 calculated by the director on a quarterly basis. This calculation shall provide discounts
5 approximately equal to the amount of the negotiated drug rebate minus an amount to cover the
6 reasonable administrative costs of the Rx card program.

7 (3) Eligibility for participation. (i) An individual is eligible to participate in the Rx card
8 program if he or she is a resident of the state and is eligible for participation in the medicare
9 program or has a net family income below three hundred fifty percent (350%) of the federal
10 poverty level.

11 (ii) An individual is ineligible to participate in the Rx card program if he or she is eligible
12 for assistance under the state's medicaid program or is covered by an insurance policy that
13 provides benefits for prescription drugs equal to or greater than the benefits provided under the
14 Rx card program, as delineated by rules and regulations promulgated by the director.

15 (iii) The department shall establish simple procedures for enrolling Rx card participants
16 and shall undertake outreach efforts to build public awareness of the program and maximize
17 enrollment by eligible residents.

18 (iv) There will be no charge for enrolling in the Rx card program.

19 (4) Operation.

20 (i) The director shall adopt rules and regulations requiring disclosure by participating
21 retail pharmacies to Rx card program participants of the amount of savings provided as a result of
22 the Rx card program. The rules must protect information that is proprietary in nature.

23 (ii) A participating retail pharmacy shall verify to the department the amounts charged to
24 Rx card participants and nonparticipants, and shall provide the department with utilization data
25 necessary to calculate rebates from manufacturers and labelers. The department shall protect the
26 confidentiality of all information subject to confidentiality protection under state or federal law,
27 rule or regulation. The department may not impose transaction charges on wholesalers or
28 participating retail pharmacies that submit claims or receive payments under the program.

29 (iii) Wholesalers and/or participating retail pharmacies shall be paid in advance for Rx
30 card discounts or shall be reimbursed by the department on a weekly basis.

31 (iv) The department may require a wholesaler or participating retail pharmacy to
32 segregate drugs under the Rx card program from other drug stock. The department may require a
33 wholesaler or participating retail pharmacy to maintain records of acquisition and disposition of
34 drugs under the Rx card program separately from the wholesaler's or pharmacy's other records.

1 (5) Confidentiality. The department shall not release information about any participant in
2 the Rx card program except as would be permitted under chapter 5, section 37.3 of these laws.

3 (d) Administration. – (1) Discrepancies in rebate amounts. Disputes or discrepancies in
4 rebate amounts must be resolved using the process established in this subsection.

5 (i) If there is a discrepancy in the manufacturer’s or labeler’s favor between the amount
6 claimed by a pharmacy and the amount rebated by the manufacturer or la beler, the department, at
7 the department’s expense, may hire a mutually agreed upon independent auditor. If a discrepancy
8 still exists following the audit, the manufacturer or labeler shall justify the reason for the
9 discrepancy or make payment to the department for any additional amount due.

10 (ii) If there is a discrepancy against the interest of the manufacturer or labeler in the
11 information provided by the department to the manufacturer or labeler regarding the
12 manufacturer’s or labeler’s rebate, the manufacturer or labeler, at the manufacturer’s or labeler’s
13 expense, may hire a mutually agreed upon independent auditor to verify the accuracy of the data
14 supplied to the department. If a discrepancy still exists following the audit, the department shall
15 justify the reason for the discrepancy or refund to the manufacturer or labeler any excess payment
16 made by the manufacturer or labeler.

17 (iii) Following the procedures established in subparagraph (i) or (ii) herein, either the
18 department or the manufacturer or the labeler may request a hearing. Supporting documentation
19 must accompany the request for a hearing. The director shall promulgate rules and regulations to
20 govern the form and content of a hearing request.

21 (2) Annual summary report. The department shall report the enrollment and financial
22 status of the Rx card program and report savings from supplemental medicaid rebates to the
23 legislature by February 1 each year.

24 (3) Coordination with other programs. Where the director finds that it is beneficial to
25 both the Rx card program and another state program, including the state medicaid program, to
26 combine drug pricing negotiations to maximize drug rebates, the director shall do so.

27 (4) Rulemaking. The department shall adopt rules and regulations to implement the
28 provisions of this section.

29 (5) Waivers. The department may seek any waivers of federal law, rule or regulation
30 necessary to implement the provisions of this section.

31 **23-77-4. Community advisory committee.** – (a) The director shall appoint a community
32 advisory committee, composed of health care consumers, advocates, and providers, which shall
33 meet monthly.

34 (b) The members of the committee shall be as follows: two (2) of whom shall be

1 appointed by the speaker of the house; two (2) of whom shall be appointed by the president of the
2 senate; one (1) of whom shall be appointed by the house minority leader; one (1) of whom shall
3 be appointed by the senate minority leader; one (1) medical doctor appointed by the Rhode Island
4 Medical Society; one (1) nurse appointed by the Rhode Island State Nurses' Association; one (1)
5 pharmacist appointed by the Rhode Island Pharmacists' Association; one (1) person appointed by
6 Ocean State Action; one (1) social worker appointed by the National Association of Social
7 Workers/Rhode Island Chapter; one (1) person appointed by the Rhode Island Public Interest
8 Research Group; one (1) person appointed by the Coalition for Consumer Justice; one (1) person
9 appointed by the Alliance for Retired Americans; one (1) person appointed by the Hospital
10 Association of Rhode Island; one (1) person appointed by the Health Center Association of
11 Rhode Island; one (1) person appointed by the Gray Panthers; and one (1) person appointed by
12 the Rhode Island AFL-CIO.

13 (c) The functions of the committee shall include:

14 (1) To review and evaluate matters concerning the Rx card program and to propose
15 appropriate recommendations to the department;

16 (2) To act as advisory committee to the director and concerning the price of prescription
17 drugs; and

18 (3) To stimulate research into making the program available to Rhode Islanders.

19 **23-77-5. Severability.** – If any provision of this chapter or the application of any
20 provision to any person or circumstances is for any reason held invalid, the remainder of the
21 chapter and the application of its provisions to other persons or circumstances shall not be
22 affected thereby.

23 SECTION 2. This act shall take effect on July 1, 2003.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO HEALTH AND SAFETY -- FAIR MARKET DRUG PRICING

1 This act would establish the Rhode Island Fair Market Drug Pricing Program. This
2 program would establish a state pharmaceutical assistance program whereby the state would
3 negotiate supplemental rebates or discounted prices from drug manufacturers. These savings
4 would be passed on to consumers.

5 This act would take effect on July 1, 2003.

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