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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2010

A N A C T

RELATING TO COMMERCIAL LAW--GENERAL REGULATORY PROVISIONS --
PROTECTION AGAINST UNFAIR PRESCRIPTION DRUG PRACTICES

Introduced By: Senators Crowley, DeVall, Metts, Pichardo, and Jabour

Date Introduced: March 25, 2010

Referred To: Senate Health & Human Services

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 6 of the General Laws entitled "COMMERCIAL LAW - GENERAL
2 REGULATORY PROVISIONS" is hereby amended by adding thereto the following chapter:

3 CHAPTER 13.4

4 PROTECTION AGAINST UNFAIR PRESCRIPTION DRUG PRACTICES

5 **6-13.4-1. Purposes.** -- The purpose of this chapter is to reduce the state's spending on
6 prescription drugs by requiring pharmacy benefit managers to act as fiduciaries for their clients,
7 to increase transparency of pharmacy benefit manager practices, and to prevent fraud and
8 deception and help market forces to work in the interest of lowering prices to end users of
9 medicines. Under this chapter, in addition to acting as fiduciaries for their clients, pharmacy
10 benefits managers must disclose conflicts of interest, disgorge profits from self-dealing, and
11 disclose to the covered entities certain of their financial arrangements with third-parties.
12 Violations of this law are violations of Rhode Island's unfair trade practices or consumer
13 protection laws, which generally provide for treble damages for violations and give authority to
14 the attorney general to bring actions on behalf of the state. Pharmacy benefits managers and
15 contracts for pharmacy benefits management shall and must comply with the requirements of this
16 chapter.

17 **6-13.4-2. Definitions.** -- As used in this chapter, unless the context otherwise indicates,
18 the following terms have the following meanings:

1 (1) “Covered entity” means a nonprofit hospital or medical service organization, insurer,
2 health coverage plan or health maintenance organization licensed pursuant to state insurance
3 laws; a health program administered by the department of health or any group of persons
4 organized in this state that provides health coverage to covered individuals who are employed or
5 reside in Rhode Island. “Covered entity” does not include a health plan that provides coverage
6 only for accidental injury, specified disease, hospital indemnity, Medicare supplement, disability
7 income, long-term care or other limited benefit health insurance policies and contracts.

8 (2) “Covered individual” means a member, participant, enrollee, contract holder or policy
9 holder or beneficiary of a covered entity who is provided health coverage by the covered entity.
10 “Covered individual” includes a dependent or other person provided health coverage through a
11 policy, contract or plan for a covered individual.

12 (3) “Generic drug” means a chemically equivalent copy of a brand-name drug with an
13 expired patent.

14 (4) “Labeler” means an entity or person that receives prescription drugs from a
15 manufacturer or wholesaler and repackages those drugs for later retail sale and that has a labeler
16 code from the federal food and drug administration under 21 code of federal regulations, 270.20
17 (1999).

18 (5) “Pharmacy benefits management” means the procurement of prescription drugs at a
19 negotiated rate for dispensation within this state to covered individuals, the administration or
20 management of prescription drug benefits provided by a covered entity for the benefit of covered
21 individuals or any of the following services provided with regard to the administration of
22 pharmacy benefits:

- 23 (i) Mail service pharmacy;
- 24 (ii) Claims processing, retail network management and payment of claims to pharmacies
25 for prescription drugs dispensed to covered individuals;
- 26 (iii) Clinical formulary development and management services;
- 27 (iv) Rebate contracting and administration;
- 28 (v) Certain patient compliance, therapeutic intervention and generic substitution
29 programs; and
- 30 (vi) Disease management programs.

31 (6) “Pharmacy benefits manager” means an entity that performs pharmacy benefits
32 management. “Pharmacy benefits manager” includes a person or entity acting for a pharmacy
33 benefits manager in a contractual or employment relationship in the performance of pharmacy
34 benefits management for a covered entity and includes mail service pharmacy.

1 **6-13.4-3. Required practices.** -- A pharmacy benefits manager owes a fiduciary duty to
2 a covered entity and shall discharge that duty in accordance with the provisions of state and
3 federal law.

4 (1) A pharmacy benefits manager shall perform its duties with care, skill, prudence and
5 diligence and in accordance with the standards of conduct applicable to a fiduciary in an
6 enterprise of a like character and with like aims.

7 (2) A pharmacy benefits manager shall notify the covered entity in writing of any
8 activity, policy or practice of the pharmacy benefits manager that directly or indirectly presents
9 any conflict of interest with the duties imposed by this section.

10 (3) A pharmacy benefits manager shall provide to a covered entity all financial and
11 utilization information requested by the covered entity relating to the provision of benefits to
12 covered individuals through that covered entity. A pharmacy benefits manager providing
13 information under this subsection may designate that material as confidential. Information
14 designated as confidential by a pharmacy benefits manager and provided to a covered entity
15 under this subsection may not be disclosed by the covered entity to any person without the
16 consent of the pharmacy benefits manager except that disclosure may be made in a court filing
17 under Rhode Island law governing deceptive trade practices or when authorized by that act or
18 ordered by a court of this state for good cause shown or made in a court filing under seal unless or
19 until otherwise ordered by court. Nothing in this paragraph limits the attorney general's use of
20 civil investigative demand authority (or similar authority) under Rhode Island law governing
21 deceptive trade practices to investigate violations of this section.

22 (4) With regard to the dispensation of a substitute prescription drug for a prescribed drug
23 to a covered individual the following provisions apply:

24 (i) If a pharmacy benefits manager makes a substitution in which the substitute drug costs
25 more than the prescribed drug, the pharmacy benefits manager shall disclose to the covered entity
26 the cost of both drugs and any benefit or payment directly or indirectly accruing to the pharmacy
27 benefits manager as a result of the substitution.

28 (ii) The pharmacy benefits manager shall transfer in full to the covered entity any benefit
29 or payment received in any form by the pharmacy benefits manager either as a result of a
30 prescription drug substitution under subdivision (1) or as a result of the pharmacy benefits
31 manager substituting a lower priced generic and therapeutically equivalent drug for a higher
32 priced prescribed drug.

33 (4) A pharmacy benefits manager that derives any payment or benefit for the dispensation
34 of prescription drugs with the state based on volume of sales for certain prescription drugs or

1 classes or bands of drugs within the state shall pass that payment or benefit on in full to the
2 covered entity.

3 (5) A pharmacy benefits manager shall disclose to the covered entity all financial terms
4 and arrangement for remuneration of any kind that apply between the pharmacy benefits manager
5 and any prescription drug manufacturer or labeler, including, without limitation, formulary
6 management and drug-switch programs, educational support, claims processing and pharmacy
7 network fees that are charged from retail pharmacies and data sales fees. A pharmacy benefits
8 manager disclosing information under this paragraph may designate that material as confidential.
9 Information designated as confidential by a pharmacy benefits manager and disclosed by the
10 covered entity under this paragraph may not be disclosed by the covered entity to any person
11 without the consent of the pharmacy benefits manager, except that disclosure may be made in a
12 court filing under the state law governing deceptive trade practices or when authorized by that act
13 or ordered by a court of this state for good cause shown or made in a court filing under seal unless
14 or until otherwise ordered by a court. Nothing in this paragraph limits the attorney general's use
15 of civil investigative demand authority (or similar authority) under Rhode Island law governing
16 deceptive trade practices to investigate violations of this section.

17 **6-13.4-4. Registration.** -- All pharmacy benefits managers operating in Rhode Island
18 shall register with the insurance commissioner. The insurance commissioner shall assess all
19 pharmacy benefits mangers a reasonable annual fee to cover the costs of registration under this
20 section.

21 **6-13.4-5. Annual certification.** -- Any pharmacy benefits manager operating in Rhode
22 Island shall file annual certifications with the insurance commission to show that they are in
23 compliance with the fiduciary, transparency, and other rules in this chapter.

24 **6-13.4-6. Market conduct review and audit.** – The insurance commissioner shall utilize
25 its market conduct and audit authority to review pharmacy benefit mangers' compliance with
26 these rules. The insurance commissioner shall have the authority to charge companies an annual
27 fee proportionally to the agency's cost associated with conducting the market conduct exam and
28 audit. The insurance commissioner shall carry out a market conduct exam (and audit) at least
29 once every three (3) years and report its findings to the speaker of the house and senate president.

30 **6-13.4-7. Compliance.** – Compliance with the requirements of this section is required in
31 all contracts for pharmacy benefits management entered into by this state or by a covered entity in
32 this state.

33 **6-13.4-8. Enforcement.** – (a) A violation of this section is a violation of Rhode Island
34 law governing deceptive trade practices.

1 **(b) The insurance commissioner has authority to utilize any of the remedies under the**
2 **general laws to enforce this chapter.**

3 **6-13.4-9. Rulemaking. – The insurance commissioner may adopt rules as necessary to**
4 **implement this chapter.**

5 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
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RELATING TO COMMERCIAL LAW--GENERAL REGULATORY PROVISIONS --
PROTECTION AGAINST UNFAIR PRESCRIPTION DRUG PRACTICES

- 1 This act would require pharmacy benefit managers to act as fiduciaries for their clients. It
- 2 would also prevent fraud and deception and would help market forces to work in the interest of
- 3 lowering prices to end users of medicines.
- 4 This act would take effect upon passage.

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