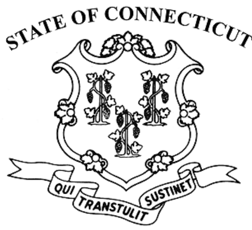


# House of Representatives

General Assembly

**File No. 374**

*February Session, 2022*

Substitute House Bill No. 5386

*House of Representatives, April 7, 2022*

The Committee on Insurance and Real Estate reported through REP. WOOD, K. of the 29th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

***AN ACT CONCERNING HEALTH INSURANCE COVERAGE FOR EPINEPHRINE CARTRIDGE INJECTORS, HEALTH CARRIERS AND PHARMACY BENEFIT MANAGERS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective January 1, 2023*) (a) Each individual health
2 insurance policy providing coverage of the type specified in
3 subdivisions (1), (2), (4), (11), (12) and (16) of section 38a-469 of the
4 general statutes delivered, issued for delivery, renewed, amended or
5 continued in this state on or after January 1, 2023, that includes coverage
6 for outpatient prescription drugs shall provide coverage for at least one
7 epinephrine cartridge injector, as defined in section 19a-909 of the
8 general statutes.

9 (b) No policy described in subsection (a) of this section shall impose
10 a coinsurance, copayment, deductible or other out-of-pocket expense for
11 the epinephrine cartridge injector that such policy is required to cover
12 pursuant to said subsection (a) in an amount that is greater than twenty-
13 five dollars. The provisions of this subsection shall apply to a high

14 deductible health plan, as that term is used in subsection (f) of section
15 38a-493 of the general statutes, to the maximum extent permitted by
16 federal law, except if such plan is used to establish a medical savings
17 account or an Archer MSA pursuant to Section 220 of the Internal
18 Revenue Code of 1986, or any subsequent corresponding internal
19 revenue code of the United States, as amended from time to time, or a
20 health savings account pursuant to Section 223 of said Internal Revenue
21 Code, as amended from time to time. The provisions of this subsection
22 shall apply to such high deductible health plans to the maximum extent
23 that (1) is permitted by federal law, and (2) does not disqualify such
24 account for the deduction allowed under Section 220 or 223, of the
25 Internal Revenue Code of 1986, as applicable.

26 Sec. 2. (NEW) (*Effective January 1, 2023*) (a) Each group health
27 insurance policy providing coverage of the type specified in
28 subdivisions (1), (2), (4), (11), (12) and (16) of section 38a-469 of the
29 general statutes delivered, issued for delivery, renewed, amended or
30 continued in this state on or after January 1, 2023, that includes coverage
31 for outpatient prescription drugs shall provide coverage for at least one
32 epinephrine cartridge injector, as defined in section 19a-909 of the
33 general statutes.

34 (b) No policy described in subsection (a) of this section shall impose
35 a coinsurance, copayment, deductible or other out-of-pocket expense for
36 the epinephrine cartridge injector that such policy is required to cover
37 pursuant to said subsection (a) in an amount that is greater than twenty-
38 five dollars. The provisions of this subsection shall apply to a high
39 deductible health plan, as that term is used in subsection (f) of section
40 38a-520 of the general statutes, to the maximum extent permitted by
41 federal law, except if such plan is used to establish a medical savings
42 account or an Archer MSA pursuant to Section 220 of the Internal
43 Revenue Code of 1986, or any subsequent corresponding internal
44 revenue code of the United States, as amended from time to time, or a
45 health savings account pursuant to Section 223 of said Internal Revenue
46 Code, as amended from time to time. The provisions of this subsection
47 shall apply to such high deductible health plans to the maximum extent

48 that (1) is permitted by federal law, and (2) does not disqualify such
49 account for the deduction allowed under Section 220 or 223, of said
50 Internal Revenue Code of 1986, as applicable.

51 Sec. 3. Section 38a-479ooo of the general statutes is repealed and the
52 following is substituted in lieu thereof (*Effective January 1, 2023*):

53 For the purposes of this part and section 4 of this act:

54 (1) "Commissioner" means the Insurance Commissioner.

55 (2) "Department" means the Insurance Department.

56 (3) "Drug" has the same meaning as provided in section 21a-92.

57 (4) "Health care plan" means an individual or a group health
58 insurance policy that provides coverage of the types specified in
59 subdivisions (1), (2), (4), (11) and (12) of section 38a-469 and includes
60 coverage for outpatient prescription drugs.

61 (5) "Health carrier" means an insurance company, health care center,
62 hospital service corporation, medical service corporation, fraternal
63 benefit society or other entity that delivers, issues for delivery, renews,
64 amends or continues a health care plan in this state.

65 (6) "Person" has the same meaning as provided in section 38a-1.

66 (7) "Pharmacist" has the same meaning as provided in section 38a-
67 479aaa.

68 (8) "Pharmacist services" has the same meaning as provided in section
69 38a-479aaa.

70 (9) "Pharmacy" has the same meaning as provided in section 38a-
71 479aaa.

72 (10) "Pharmacy benefits manager" or "manager" means any person
73 that administers the prescription drug, prescription device, pharmacist
74 services or prescription drug and device and pharmacist services

75 portion of a health care plan on behalf of a health carrier.

76 (11) (A) "Rebate" means a discount or concession, which affects the
77 price of an outpatient prescription drug, that a pharmaceutical
78 manufacturer directly provides to a (i) health carrier for an outpatient
79 prescription drug manufactured by the pharmaceutical manufacturer,
80 or (ii) pharmacy benefits manager after the manager processes a claim
81 from a pharmacy or a pharmacist for an outpatient prescription drug
82 manufactured by the pharmaceutical manufacturer.

83 (B) "Rebate" does not mean a bona fide service fee, as such term is
84 defined in Section 447.502 of Title 42 of the Code of Federal Regulations,
85 as amended from time to time.

86 (12) "Specialty drug" means a prescription outpatient specialty drug
87 covered under the Medicare Part D program established pursuant to
88 Public Law 108-173, the Medicare Prescription Drug, Improvement, and
89 Modernization Act of 2003, as amended from time to time, that exceeds
90 the specialty tier cost threshold established by the Centers for Medicare
91 and Medicaid Services.

92 Sec. 4. (NEW) (*Effective January 1, 2023*) On or after January 1, 2023,
93 each contract entered into between a health carrier and a pharmacy
94 benefits manager that requires the pharmacy benefits manager to
95 administer the prescription drug, prescription device, pharmacist
96 services or prescription drug and device and pharmacist services
97 portion of a health care plan on behalf of the health carrier shall, if the
98 pharmacy benefits manager utilizes a tiered prescription drug
99 formulary, require the pharmacy benefits manager to include at least
100 one covered epinephrine cartridge injector, as defined in section 19a-909
101 of the general statutes, in the cost-sharing tier that imposes the lowest
102 coinsurance, copayment, deductible or other out-of-pocket expense for
103 covered prescription drugs.

| This act shall take effect as follows and shall amend the following sections: |
| --- |

| | | |
|---|---|---|
| Section 1 | *January 1, 2023* | New section |
| Sec. 2 | *January 1, 2023* | New section |
| Sec. 3 | *January 1, 2023* | 38a-479ooo |
| Sec. 4 | *January 1, 2023* | New section |

***Statement of Legislative Commissioners:***
The title of the bill was changed for accuracy.

***INS*** *Joint Favorable Subst.*

*The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.*

## OFA Fiscal Note

***State Impact:*** None

***Municipal Impact:***

| Municipalities | Effect | FY 23 $ | FY 24 $ |
|---|---|---|---|
| Various Municipalities | STATE MANDATE[1] - Cost | See Below | See Below |

## Explanation

There is no fiscal impact to the State resulting from the bill, which requires that epinephrine cartridge injectors be covered under certain health insurance policies at a total out of pocket cost of $25 or less. The state employee and retiree health plans already provide coverage in accordance with the bill. The bill may result in a potential cost to fully insured municipalities, to the extent that providing coverage below the out-of-pocket threshold may increase premiums reflected in plan years beginning on and after January 1, 2023.

In addition, many municipal health plans are recognized as "grandfathered" health plans under the Affordable Care Act (ACA). It is unclear what effect the adoption of certain health mandates will have on the grandfathered status of certain municipal plans under ACA. Pursuant to federal law, municipalities with self-insured plans are exempt from state insurance mandates.

[1] State mandate is defined in Sec. 2-32b(2) of the Connecticut General Statutes, "state mandate" means any state initiated constitutional, statutory or executive action that requires a local government to establish, expand or modify its activities in such a way as to necessitate additional expenditures from local revenues.

### *The Out Years*

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

## OLR Bill Analysis
## sHB 5386

### *AN ACT CONCERNING HEALTH INSURANCE COVERAGE FOR EPINEPHRINE CARTRIDGE INJECTORS, HEALTH CARRIERS AND PHARMACY BENEFIT MANAGERS.*

### SUMMARY

This bill (1) requires certain individual and group health insurance policies that cover outpatient prescription drugs to cover at least one epinephrine cartridge injector (e.g., EpiPen) and (2) caps an insured's cost sharing (e.g., copayment, coinsurance, or deductible) for the injector at $25. (It is unclear if the coverage requirement is for at least one injector each year or for the lifetime of the policy.)

By law, an "epinephrine cartridge injector" is an automatic prefilled cartridge injector or similar injectable device used to deliver epinephrine in a standard dose as an emergency first aid response to allergic reactions.

Additionally, the bill requires each contract between a health carrier (e.g., insurer or HMO) and a pharmacy benefits manager (PBM) that requires the PBM to administer a health care plan's pharmacy benefits on the carrier's behalf to also require the PBM to include at least one covered epinephrine cartridge injector in the lowest cost-sharing tier if it uses a tiered prescription drug formulary (i.e., list of covered drugs).

EFFECTIVE DATE: January 1, 2023

### APPLICABILITY OF INSURANCE COVERAGE REQUIREMENT

The bill's coverage requirement applies to fully-insured individual and group health insurance policies delivered, issued, renewed, amended, or continued in Connecticut on or after January 1, 2023, that cover (1) basic hospital expenses; (2) basic medical-surgical expenses; (3)

major medical expenses; (4) hospital or medical services, including those provided under an HMO plan; or (5) single service ancillary coverage, including prescription drug coverage. Because of the federal Employee Retirement Income Security Act (ERISA), state insurance benefit mandates do not apply to self-insured benefit plans.

## APPLICABILITY OF COST-SHARING LIMITATION

The bill's cost-sharing limitation applies to each plan described above. However, for plans that are high deductible health plans (HDHPs), it applies only to the maximum extent (1) permitted by federal law and (2) that does not disqualify someone who establishes a health savings account (HSA), medical savings account (MSA), or Archer MSA from receiving the associated federal tax benefits. Under federal law, individuals with eligible HDHPs may make pre-tax contributions to an HSA, MSA, or Archer MSA and use the account for qualified medical expenses.

## COMMITTEE ACTION

Insurance and Real Estate Committee

Joint Favorable Substitute
Yea 16 Nay 1 (03/22/2022)