
 THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2069 Session of
2015

INTRODUCED BY FARRY, SAMUELSON, HENNESSEY, GROVE, YOUNGBLOOD,
BARRAR, COOK-ARTIS, V. BROWN, DeLUCA, BAKER, GALLOWAY,
WATSON, FREEMAN, DRISCOLL, QUIGLEY, GODSHALL, D. MILLER,
PHILLIPS-HILL, ROZZI, SAINATO, BULLOCK, MILLARD, SCHLOSSBERG,
STAATS, DiGIROLAMO, GIBBONS, D. COSTA, LONGIETTI, HARHAI,
DeLISSIO, RAVENSTAHL, THOMAS, GINGRICH, JOZWIAK, WHITE,
DAVIS, GILLEN, BRIGGS, BARBIN, NELSON AND MATZIE,
MAY 12, 2016

SENATOR BROOKS, AGING AND YOUTH, IN SENATE, AS AMENDED,
JUNE 30, 2016

AN ACT

1 Amending the act of August 26, 1971 (P.L.351, No.91), entitled
2 "An act providing for a State Lottery and administration
3 thereof; authorizing the creation of a State Lottery
4 Commission; prescribing its powers and duties; disposition of
5 funds; violations and penalties therefor; exemption of prizes
6 from State and local taxation and making an appropriation,"
7 in pharmaceutical assistance for the elderly, further
8 providing for definitions, for program generally and for
9 generic drugs, providing for medication synchronization,
10 further providing for the Pharmaceutical Assistance Contract
11 for the Elderly Needs Enhancement Tier (PACENET) and for
12 board ~~and~~, providing for medication therapy management AND <--
13 FURTHER PROVIDING FOR COORDINATION OF BENEFITS.

14 The General Assembly of the Commonwealth of Pennsylvania
15 hereby enacts as follows:

16 ~~Section 1. The definition of "board" in section 502 of the <--~~
17 ~~act of August 26, 1971 (P.L.351, No.91), known as the State~~
18 ~~Lottery Law, added November 21, 1996 (P.L.741, No.134), is~~
19 ~~amended and the section is amended by adding definitions to~~

1 ~~read:~~

2 SECTION 1. THE DEFINITIONS OF "BOARD" AND "INCOME" IN <--
3 SECTION 502 OF THE ACT OF AUGUST 26, 1971 (P.L.351, NO.91),
4 KNOWN AS THE STATE LOTTERY LAW, ADDED NOVEMBER 21, 1996
5 (P.L.741, NO.134) AND REENACTED AND AMENDED FEBRUARY 7, 2014
6 (P.L.27, NO.12), ARE AMENDED AND THE SECTION IS AMENDED BY
7 ADDING DEFINITIONS TO READ:

8 Section 502. Definitions.

9 The following words and phrases when used in this chapter
10 shall have the meanings given to them in this section unless the
11 context clearly indicates otherwise:

12 * * *

13 "Board." The Pharmaceutical Assistance [Review] Advisory
14 Board.

15 * * *

16 "INCOME." ALL INCOME FROM WHATEVER SOURCE DERIVED, <--
17 INCLUDING, BUT NOT LIMITED TO, SALARIES, WAGES, BONUSES,
18 COMMISSIONS, INCOME FROM SELF-EMPLOYMENT, ALIMONY, SUPPORT
19 MONEY, CASH PUBLIC ASSISTANCE AND RELIEF, THE GROSS AMOUNT OF
20 ANY PENSIONS OR ANNUITIES, INCLUDING RAILROAD RETIREMENT
21 BENEFITS, ALL BENEFITS RECEIVED UNDER THE SOCIAL SECURITY ACT
22 (49 STAT. 620, 42 U.S.C. § 301 ET. SEQ.) NET OF AMOUNTS WITHHELD
23 FOR MEDICARE PART B PREMIUM PAYMENT, ALL BENEFITS RECEIVED UNDER
24 STATE UNEMPLOYMENT INSURANCE LAWS AND VETERANS' DISABILITY
25 PAYMENTS, ALL INTEREST RECEIVED FROM THE FEDERAL GOVERNMENT OR
26 ANY STATE GOVERNMENT OR ANY INSTRUMENTALITY OR POLITICAL
27 SUBDIVISION THEREOF, REALIZED CAPITAL GAINS, RENTALS, WORKMEN'S
28 COMPENSATION AND THE GROSS AMOUNT OF LOSS OF TIME INSURANCE
29 BENEFITS, LIFE INSURANCE BENEFITS AND PROCEEDS, EXCEPT THE FIRST
30 \$10,000 OF THE TOTAL OF DEATH BENEFITS PAYMENTS, AND GIFTS OF

1 CASH OR PROPERTY, OTHER THAN TRANSFERS BY GIFT BETWEEN MEMBERS
2 OF A HOUSEHOLD, IN EXCESS OF A TOTAL VALUE OF \$300, BUT SHALL
3 NOT INCLUDE SURPLUS FOOD OR OTHER RELIEF IN KIND SUPPLIED BY A
4 GOVERNMENT AGENCY, THE PRINCIPAL AND ANY INTEREST ACCRUED FROM A
5 SAVINGS BOND OR PROPERTY TAX REBATE NOR SHALL THE TERM INCLUDE
6 ANY STATE VETERANS' BENEFIT PAYMENTS.

7 * * *

8 "Medication synchronization." The coordination of
9 prescription drug filling or refilling by a pharmacy or
10 dispensing physician for a program participant taking two or
11 more medications for the purpose of improving medication
12 adherence.

13 "NADAC per unit." The current National Average Drug
14 Acquisition Cost per unit.

15 * * *

16 "STATE VETERANS' BENEFIT PAYMENTS." SERVICE-CONNECTED <--
17 COMPENSATION OR PAYMENTS PROVIDED TO A VETERAN OR AN UNMARRIED
18 SURVIVING SPOUSE OF A VETERAN BY A STATE AGENCY OR AUTHORIZED
19 UNDER STATE LAW.

20 "Wholesale acquisition cost." The cost of a dispensed drug
21 based upon the price published in a national drug pricing system
22 in current use by the Department of Aging as the wholesale
23 acquisition cost of a prescription drug in the most common
24 package size.

25 Section 2. Section 509(6) of the act, amended July 7, 2006
26 (P.L.1061, No.111), is amended and the section is amended by
27 adding a paragraph to read:

28 Section 509. Program generally.

29 The program shall include the following:

30 * * *

1 [(6) The program payment shall be the lower of the
2 following amounts determined as follows:

3 (i) 88% of the average wholesale cost of the
4 prescription drug dispensed:

5 (A) with the addition of a dispensing fee of the
6 greater of:

7 (I) \$4 per prescription; or

8 (II) the amount set by the department by
9 regulation;

10 (B) the subtraction of the copayment; and

11 (C) if required, the subtraction of the generic
12 differential; or

13 (ii) the pharmacy's usual charge for the drug
14 dispensed with the subtraction of the copayment and, if
15 required, the subtraction of the generic differential; or

16 (iii) if a generic drug, the most current Federal
17 upper payment limits established in the Medicaid Program
18 under 42 CFR § 447.332 (relating to upper limits for
19 multiple source drugs), plus a dispensing fee of \$4 or
20 the amount set by the department by regulation, whichever
21 is greater minus the copayment. The department shall
22 update the average wholesale costs and the Federal upper
23 payment limits at least every 30 days.]

24 (6.1) If the NADAC per unit is available, the program
25 payment shall be the lower of the following amounts:

26 (i) the NADAC per unit:

27 (A) with the addition of a professional
28 dispensing fee of thirteen dollars per prescription;

29 and

30 (B) the subtraction of the copayment; or

1 (ii) the pharmacy's usual and customary charge for
2 the drug dispensed with the subtraction of the copayment.

3 (6.2) If the NADAC per unit is unavailable, the program
4 payment shall be the lower of the following amounts:

5 (i) the wholesale acquisition cost plus 3.2%:

6 (A) with the addition of a professional
7 dispensing fee of thirteen dollars per prescription;
8 and

9 (B) the subtraction of the copayment; or

10 (iii) the pharmacy's usual and customary charge for
11 the drug dispensed with the subtraction of the copayment.

12 * * *

13 Section 3. Section 510(a) and (b) of the act, amended July
14 7, 2006 (P.L.1061, No.111), are amended to read:

15 Section 510. Generic drugs.

16 (a) In general.--Notwithstanding any other statute or
17 regulation, a brand name product shall be dispensed and not
18 substituted with an A-rated generic therapeutically equivalent
19 drug if it is less expensive to the program. If a less expensive
20 A-rated generic therapeutically equivalent drug is available for
21 dispensing to a claimant, the provider shall dispense the A-
22 rated generic therapeutically equivalent drug to the claimant.

23 The department shall reimburse providers based upon the most
24 current listing of [Federal upper payment limits established in
25 the Medicaid Program under 42 CFR § 447.332 (relating to upper
26 limits for multiple source drugs), plus a dispensing fee as set
27 forth in section 509(6). The department shall update the average
28 wholesale costs and the Federal upper payment limits on a
29 regular basis, at least every 30 days.] the NADAC per unit plus
30 a professional dispensing fee of \$13 per prescription. The

1 department shall not reimburse providers for brand name products
2 except in the following circumstances:

3 (1) There is no A-rated generic therapeutically
4 equivalent drug available on the market. This paragraph does
5 not apply to the lack of availability of an A-rated generic
6 therapeutically equivalent drug in the providing pharmacy
7 unless it can be shown to the department that the provider
8 made reasonable attempts to obtain the A-rated generic
9 therapeutically equivalent drug or that there was an
10 unforeseeable demand and depletion of the supply of the A-
11 rated generic therapeutically equivalent drug. In either
12 case, the department shall reimburse the provider for [88% of
13 the average wholesale cost] the NADAC per unit plus a
14 professional dispensing fee [based on the least expensive A-
15 rated generic therapeutically equivalent drug for the brand
16 drug dispensed] of \$13 per prescription.

17 (2) An A-rated generic therapeutically equivalent drug
18 is deemed by the department, in consultation with a
19 utilization review committee, to have too narrow a
20 therapeutic index for safe and effective dispensing in the
21 community setting. The department shall notify providing
22 pharmacies of A-rated generic therapeutically equivalent
23 drugs that are identified pursuant to this paragraph on a
24 regular basis.

25 (3) The Department of Health has determined that a drug
26 shall not be recognized as an A-rated generic therapeutically
27 equivalent drug for purpose of substitution under section
28 5(b) of the act of November 24, 1976 (P.L.1163, No.259),
29 referred to as the Generic Equivalent Drug Law.

30 (4) At the time of dispensing, the provider has a

1 prescription on which the brand name drug dispensed is billed
2 to the program by the provider at a usual and customary
3 charge which is equal to or less than the least expensive
4 usual and customary charge of any A-rated generic
5 therapeutically equivalent drug reasonably available on the
6 market to the provider.

7 (5) The brand name drug is less expensive to the
8 program.

9 (b) Generic not accepted.--If a claimant chooses not to
10 accept the A-rated generic therapeutically equivalent drug
11 required by subsection (a), the claimant shall be liable for the
12 copayment and [70% of the average wholesale cost of the brand
13 name drug] the NADAC per unit.

14 * * *

15 Section 4. The act is amended by adding a section to read:
16 Section 515.1. Medication synchronization.

17 (a) Prorated daily cost-sharing rate.--The program shall
18 permit and apply a prorated daily cost-sharing rate to
19 prescription drugs that are dispensed by a pharmacy for less
20 than a 30 days' supply if the pharmacist or prescriber
21 determines the fill or refill to be in the best interest of the
22 program participant and the program participant requests or
23 agrees to less than a 30 days' supply for the purpose of
24 medication synchronization.

25 (b) Denial of coverage prohibited.--

26 (1) The program may not deny coverage of a prescription
27 drug that is made in accordance with a plan among the health
28 plan, individual beneficiary or group plan, a practitioner
29 and a pharmacist for the purpose of medication
30 synchronization.

1 (2) The program shall allow a pharmacy to override any
2 denial codes indicating that a prescription drug is being
3 refilled too soon for the purposes of medication
4 synchronization.

5 (c) Certain payment structures prohibited.--

6 (1) The program may not use payment structures
7 incorporating prorated dispensing fees.

8 (2) Dispensing fees for partially filled or refilled
9 prescriptions shall be paid in full for each prescription
10 drug dispensed, regardless of any prorated copayment for the
11 program participant or fee paid for alignment services.

12 Section 5. Section 519(b) AND (D) of the act, amended July <--
13 7, 2006 (P.L.1061, No.111), ~~is~~ ARE amended to read: <--

14 Section 519. The Pharmaceutical Assistance Contract for the
15 Elderly Needs Enhancement Tier.

16 * * *

17 (b) PACENET eligibility.--A person with an annual income of
18 not less than \$14,500 and not more than [\$23,500] \$31,000 in the
19 case of a single person and of not less than \$17,700 and not
20 more than [\$31,500] \$41,000 in the case of the combined income
21 of persons married to each other shall be eligible for enhanced
22 pharmaceutical assistance under this section. A person may, in
23 reporting income to the department, round the amount of each
24 source of income and the income total to the nearest whole
25 dollar, whereby any amount which is less than 50¢ is eliminated.

26 * * *

27 (D) COPAYMENT.-- <--

28 (1) FOR CLAIMANTS UNDER THIS SECTION, THE COPAYMENT
29 SCHEDULE SHALL BE:

30 (I) [EIGHT] ELEVEN DOLLARS FOR NONINNOVATOR MULTIPLE

1 SOURCE DRUGS AS DEFINED IN SECTION 702; OR
2 (II) [FIFTEEN] EIGHTEEN DOLLARS FOR SINGLE-SOURCE
3 DRUGS AND INNOVATOR MULTIPLE-SOURCE DRUGS AS DEFINED IN
4 SECTION 702.

5 (2) THE DEPARTMENT SHALL ANNUALLY CALCULATE THE
6 COPAYMENT SCHEDULES BASED ON THE PRESCRIPTION DRUGS AND
7 MEDICAL SUPPLIES CONSUMER PRICE INDEX. WHEN THE AGGREGATE
8 IMPACT OF THE PRESCRIPTION DRUGS AND MEDICAL SUPPLIES
9 CONSUMER PRICE INDEX EQUALS OR EXCEEDS \$1, THE DEPARTMENT
10 SHALL ADJUST THE COPAYMENT SCHEDULES. EACH COPAYMENT SCHEDULE
11 SHALL NOT BE INCREASED BY MORE THAN \$1 IN A CALENDAR YEAR.

12 Section 6. Section 520 of the act, amended or added November
13 21, 1996 (P.L.741, No.134) and November 26, 2003 (P.L.212,
14 No.37), is amended to read:

15 Section 520. Board.

16 (a) Establishment.--The Pharmaceutical Assistance [Review]
17 Advisory Board is continued to ensure that the program is
18 providing and continues to provide the assistance intended in a
19 fiscally responsible manner without excessively hampering the
20 pharmaceutical industry.

21 (b) Composition.--The board shall be comprised of the
22 following [eight] persons:

23 (1) The Secretary of Aging, who shall serve as its
24 chairman.

25 (2) The Secretary of Revenue.

26 (3) The Secretary of Health.

27 (4) [Five] Nine public members[, one appointed by the
28 President pro tempore of the Senate, one appointed by the
29 Minority Leader of the Senate, one appointed by the Speaker
30 of the House of Representatives, one appointed by the

1 Minority Leader of the House of Representatives and one
2 appointed by the Governor. Those appointed by the legislative
3 officers shall include two senior citizens who have not been
4 a part of the pharmaceutical industry to serve as consumer
5 advocates, one representative of the pharmaceutical industry
6 and one practicing Pennsylvania pharmacist. The individual
7 appointed by the Governor must be a physician. A public
8 member who misses two consecutive meetings without good cause
9 acceptable to the chairman shall be replaced by the
10 appointing authority.] appointed as follows:

11 (i) Four practicing Pennsylvania pharmacists whose
12 names are jointly submitted by the Pennsylvania
13 Pharmacists Association and the Pennsylvania Association
14 of Chain Drug Stores and then appointed by the following:

15 (A) One member appointed by the President pro
16 tempore of the Senate.

17 (B) one member appointed by the Minority Leader
18 of the Senate.

19 (C) One member appointed by the Speaker of the
20 House of Representatives.

21 (D) One member appointed by the Minority Leader
22 of the House of Representatives.

23 (ii) Five individuals appointed by the Governor
24 which include the following:

25 (A) One representative from the pharmaceutical
26 industry.

27 (B) Four senior citizens who have not been a
28 part of the pharmaceutical industry, two of whom may
29 be senior advocates.

30 (5) Should a board vacancy not be filled by the

1 appointing authority within 60 days, the power to appoint an
2 individual to the vacancy shall be given to the Secretary of
3 Aging.

4 (c) Review.--Using the annual report submitted by the
5 department pursuant to section 2102 and other appropriate data
6 sources, the board shall conduct an annual review. The board
7 shall develop recommendations concerning any changes in the
8 level of copayment, deductible or in the level of fees paid to
9 participating pharmacists. The board shall review the
10 department's therapeutic drug utilization review program on an
11 ongoing basis. The board may also recommend other changes in the
12 structure of the program and direct the department to enter into
13 discussions with the private contractor concerning amendments to
14 the contract, or the department may enter into such discussion
15 if it deems necessary. The copayment or deductible schedule
16 shall only be adjusted on an annual basis.

17 (c.1) Powers and duties.--The board shall advise on the
18 following:

19 (1) The development and implementation of the department
20 proposals for medication synchronization and medication
21 therapy management programs and reimbursement methodologies.

22 (2) Adjustment of the dispensing fee, as needed.

23 (3) Cost-of-living adjustment increases for medication
24 synchronization, medication therapy management and the
25 dispensing fee.

26 (d) Meetings.--The board shall meet at least two times per
27 year and not more than four times per year.

28 Section 7. The act is amended by adding a section to read:
29 Section 522.1. Medication therapy management.

30 PACE shall, in consultation with the board, develop a

1 proposal for a medication therapy management program by using
2 retail community pharmacies enrolled in the program. PACE, in
3 consultation with the board, shall submit the proposal to the
4 General Assembly no later than one year after the effective date
5 of this section.

6 SECTION 8. SECTION 534(B) (4) OF THE ACT, ADDED JULY 7, 2006 <--
7 (P.L.1061, NO.111), IS REPEALED:

8 SECTION 534. COORDINATION OF BENEFITS.

9 * * *

10 (B) SPECIFIC COORDINATION PROVISIONS.--THE FOLLOWING
11 PROVISIONS SHALL APPLY TO CLAIMANTS WHO ARE ALSO PART D
12 ENROLLEES:

13 * * *

14 [(4) PART D ENROLLEES ENROLLED IN PACENET SHALL PAY THE
15 PART D PREMIUMS CHARGED BY THEIR PDP OR, WITH RESPECT TO THE
16 PRESCRIPTION DRUG PLAN, MEDICARE ADVANTAGE PRESCRIPTION DRUG
17 PLAN AND THE PROGRAM SHALL PAY ANY COPAYMENTS IN EXCESS OF
18 THOSE SET FORTH IN SECTION 519.]

19 * * *

20 Section 9. This act shall take effect immediately. <--