
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 825 Session of
2020

INTRODUCED BY J. WARD, K. WARD, PHILLIPS-HILL, VOGEL, BLAKE,
LEACH, AUMENT, FARNESE, STEFANO, MARTIN AND SABATINA,
FEBRUARY 6, 2020

REFERRED TO HEALTH AND HUMAN SERVICES, FEBRUARY 6, 2020

AN ACT

1 Amending the act of June 13, 1967 (P.L.31, No.21), entitled "An
2 act to consolidate, editorially revise, and codify the public
3 welfare laws of the Commonwealth," in medical assistance,
4 providing for financial disclosures for pharmacy services,
5 for medical assistance reimbursement for pharmacies, for
6 medical assistance reimbursement for specialty drugs, for
7 pharmacy benefit manager networks, for cost transparency, for
8 pharmacy benefit manager reimbursement, for pay for
9 performance program and for audits and limitations.

10 The General Assembly of the Commonwealth of Pennsylvania
11 hereby enacts as follows:

12 Section 1. The act of June 13, 1967 (P.L.31, No.21), known
13 as the Human Services Code, is amended by adding sections to
14 read:

15 Section 449.1. Financial Disclosures for Pharmacy
16 Services.--(a) Any pharmacy benefit manager that contracts with
17 a medical assistance managed care organization under contract
18 with the department shall be prohibited from utilizing any
19 confidentiality provisions which would in effect prohibit
20 disclosure of information to the medical assistance managed care
21 organization and the department upon the department's request.

1 (b) Requests by the department may include the payment
2 methodology for the pharmacy benefit manager, which must include
3 the actual amount paid by the pharmacy benefit manager to a
4 pharmacy for dispensing an outpatient covered drug or medical
5 supply item, including, at a minimum, the ingredient cost and
6 dispensing fee and any other administrative fee.

7 (c) (1) A medical assistance managed care organization that
8 assigns financial responsibility for determining the dispensing
9 pharmacy payment methodology, including the ingredient cost and
10 dispensing fee, shall disclose to the department all financial
11 terms and payment arrangements that apply between the medical
12 assistance managed care organization and the pharmacy benefit
13 manager on request and within ten days of any changes to the
14 financial terms and payment arrangements.

15 (2) For the purposes of this section, a pharmacy benefit
16 manager that contracts with a medical assistance managed care
17 organization shall:

18 (i) maintain records sufficient to provide information for
19 pharmaceuticals dispensed and paid for by medical assistance to
20 the department; and

21 (ii) ensure compliance, including the information required
22 under Chapter 7 of the act of November 21, 2016 (P.L.1318,
23 No.169), known as the "Pharmacy Audit Integrity and Transparency
24 Act."

25 (d) Information disclosed or produced by a pharmacy benefit
26 manager or a medical assistance managed care organization to the
27 department under this section shall not be subject to the act of
28 February 14, 2008 (P.L.6, No.3), known as the "Right-to-Know
29 Law."

30 (e) The department may perform an audit of subcontracts with

1 pharmacy benefit managers in medical assistance to ensure
2 pharmacies are paid in accordance with section 449.2.

3 (f) A medical assistance managed care organization may use a
4 pharmacy benefit manager to process prescription claims only if
5 the medical assistance managed care organization has received
6 advanced written approval by the department.

7 (g) A medical assistance managed care organization utilizing
8 a pharmacy benefit manager shall:

9 (i) include on each outpatient drug claim the amount paid to
10 the pharmacy benefit manager by the managed care organization
11 and the amount received by the dispensing pharmacy or
12 prescribing provider;

13 (ii) report differences between the amount paid by the
14 managed care organization to the pharmacy benefit manager and
15 the amount paid by the pharmacy benefit manager to the providers
16 of covered outpatient drugs as administrative fees;

17 (iii) if the pharmacy benefit manager is owned wholly or in
18 part by the medical assistance managed care organization, a
19 retail pharmacy provider or a pharmaceutical manufacturer, the
20 managed care organization shall submit a written description of
21 the assurances and procedures that will be implemented under the
22 proposed pharmacy benefit manager subcontract, including, but
23 not limited to, an independent audit to assure that all
24 pharmacies are reimbursed under the same terms and conditions
25 and assure confidentiality of proprietary information. These
26 assurances and procedures must be submitted and receive advance
27 written approval by the department prior to initiating the
28 pharmacy benefit manager subcontract;

29 (iv) report all administrative fees charged by the pharmacy
30 benefit manager, including the difference in amounts paid as

1 prescribed under this subsection, in a format as designated by
2 the department;

3 (v) submit a written description of the procedures that the
4 managed care organization will implement to monitor the pharmacy
5 benefit manager to comply with this section; and

6 (vi) all contracts between a medical assistance managed care
7 organization and pharmacy benefit managers shall use a pass-
8 through arrangement by which the pharmacy benefit manager is
9 paid a negotiated fee per prescription for administration. The
10 administration fee shall be paid by the medical assistance
11 managed care organization to the pharmacy benefit manager. The
12 fee may not be passed to pharmacy providers. Spread pricing
13 arrangements shall not be permitted.

14 (h) As used in this section, the term "spread pricing" shall
15 mean any amount charged or claimed by a pharmacy benefit manager
16 to a managed care organization that is in excess of the amount
17 paid to the pharmacy that filled the prescription.

18 Section 449.2. Medical Assistance Reimbursement for
19 Pharmacies.--(a) The department shall reimburse pharmacies in
20 the fee-for-service delivery systems and pharmacies within a
21 managed care organization's network as follows:

22 (1) If the NADAC per unit is available, the payment to the
23 pharmacy shall be the lower of the following amounts:

24 (i) The NADAC per unit with the addition of a professional
25 dispensing fee no less than the established fee-for-service
26 dispensing fee approved by the Centers for Medicare and Medicaid
27 Services.

28 (ii) The pharmacy's usual and customary charge for the drug
29 dispensed.

30 (2) If the NADAC per unit is unavailable, the payment to the

1 pharmacy shall be the lower of the following amounts:

2 (i) The wholesale acquisition cost plus 3.2% with the
3 addition of a professional dispensing fee no less than the
4 established fee-for-service dispensing fee approved by the
5 Centers for Medicare and Medicaid Services.

6 (ii) The pharmacy's usual and customary charge for the drug
7 dispensed.

8 (b) (1) If a pharmacy benefit manager approves a claim
9 through adjudication, the pharmacy benefit manager may not
10 retroactively deny or modify reimbursement based on information
11 accompanying the original claim or information available to the
12 pharmacy benefit manager at the time of adjudication, unless the
13 claim was fraudulent, the pharmacy or pharmacists had been
14 reimbursed for the claim previously or the services reimbursed
15 were not rendered by the pharmacy or pharmacist.

16 (2) This subsection shall not apply to overpayments.

17 (c) As used in this section, unless the context clearly
18 indicates otherwise:

19 "NADAC per unit" means the current National Average Drug
20 Acquisition Cost per unit.

21 "Pharmacy benefit management" means any of the following:

22 (1) Procurement of prescription drugs at a negotiated
23 contracted rate for distribution within this Commonwealth to
24 covered individuals.

25 (2) Administration or management of prescription drug
26 benefits provided by a covered entity for the benefit of covered
27 individuals.

28 (3) Administration of pharmacy benefits, including:

29 (i) Operating a mail-service pharmacy.

30 (ii) Processing claims.

1 (iii) Managing a retail pharmacy network.

2 (iv) Paying claims to pharmacies for prescription drugs
3 dispensed to covered individuals via retail or mail-order
4 pharmacy.

5 (v) Developing and managing a clinical formulary,
6 utilization management and quality assurance programs.

7 (vi) Rebate contracting and administration.

8 (vii) Managing a patient compliance, therapeutic
9 intervention and generic substitution program.

10 (viii) Operating a disease management program.

11 (ix) Setting pharmacy reimbursement pricing and
12 methodologies, including maximum allowable cost, and determining
13 single or multiple source drugs.

14 "Pharmacy benefit manager" means a person, business or other
15 entity that performs pharmacy benefit management.

16 Section 449.3. Medical Assistance Reimbursement for
17 Specialty Drugs.--(a) Pharmacies shall be reimbursed by the
18 department through the medical assistance program for specialty
19 medications dispensed to medical assistance-eligible patients at
20 a rate based upon a national survey-based reference price,
21 including, but not limited to, the WAC, AWP or NADAC to be
22 selected by the department, plus a variable care management fee
23 to be determined by the department based on the disease state
24 being treated with a specialty medication.

25 (b) The department shall determine the activities,
26 interventions, data gathering and reporting that must be
27 completed by each pharmacy before the pharmacy may invoice a
28 variable care management fee related to the dispensing of a
29 specialty medication.

30 (c) As used in this section, unless the context clearly

1 indicates otherwise:

2 "AWP" means the Average Wholesale Price.

3 "NADAC" means the current national average drug acquisition
4 cost.

5 "Specialty medication" means an oral or injectable drug that
6 is used to treat chronic and life-threatening diseases, is
7 difficult to administer, may cause adverse reactions and
8 requires temperature control or other specialized handling to be
9 annually determined by the department.

10 "Variable care management fee" means a fee to be established
11 by the department to compensate pharmacies for dispensing and
12 other special attention, care and management in the provision
13 and/or administration of specialty medications.

14 "WAC" means the wholesale acquisition cost.

15 Section 449.4. Pharmacy Benefit Manager Networks.--(a) A
16 pharmacy benefit manager may not mandate that a medical
17 assistance enrollee use a specific retail pharmacy, mail order
18 pharmacy, specialty pharmacy or other pharmacy or entity if the
19 pharmacy benefit manager has an ownership interest in the
20 pharmacy, practice site or entity or the pharmacy, practice site
21 or entity has ownership interest in the pharmacy benefit
22 manager.

23 (b) A pharmacy benefit manager may not provide incentives to
24 beneficiaries to encourage the use of a specific pharmacy if
25 only applicable to a pharmacy benefit manager-owned or pharmacy
26 benefit manager-affiliated facility.

27 (c) A pharmacy benefit manager may not require that a
28 pharmacist or retail pharmacy participate in a network managed
29 by the pharmacy benefit manager as a condition for the retail
30 pharmacy to participate in another network managed by the same

1 pharmacy benefit manager.

2 (d) A pharmacy benefit manager may not exclude an otherwise
3 qualified pharmacist or retail pharmacy from participation in a
4 particular network if the pharmacist or pharmacy accepts the
5 terms, conditions and reimbursement rates of the pharmacy
6 benefit manager, meets all applicable Federal and State
7 licensure and permit requirements and has not been excluded from
8 participation in any Federal or State program.

9 (e) A managed care organization or pharmacy benefit manager
10 shall provide payment for a health care service that is a
11 covered benefit and is performed by a licensed pharmacist if:

12 (1) the service performed is within the scope of practice of
13 the licensed pharmacist; and

14 (2) the insurer would cover the service if the service was
15 performed by a physician, an advanced practice registered nurse
16 or a physician assistant.

17 (f) A pharmacy benefit manager may not automatically enroll
18 or disenroll a retail pharmacy without cause in a contract or
19 modify an existing agreement without written agreement of the
20 pharmacist or retail pharmacy.

21 Section 449.5. Cost Transparency.--(a) The department shall
22 direct a managed care organization utilizing a pharmacy benefit
23 manager to extract transaction information specific to the
24 department's medical assistance program from a national pharmacy
25 provider contract or agreement.

26 (b) A pharmacy benefit manager may not charge or retain a
27 differential between what is billed to a managed care
28 organization as reimbursement for prescription drugs and what is
29 paid to pharmacies by the pharmacy benefit manager for the
30 prescription drug.

1 Section 449.6. Pharmacy Benefit Manager Reimbursement.--(a)
2 Pharmacy benefit managers shall receive a reimbursement fee of
3 one dollar (\$1) per claim in a pass-through program. Spread
4 pricing arrangements shall not be permitted.

5 (b) Administration fees shall not be passed on to pharmacy
6 providers.

7 (c) Transmission fees shall not be billed to pharmacy
8 providers.

9 (d) As used in this section, the term "spread pricing" shall
10 mean any amount charged or claimed by a pharmacy benefit manager
11 to a managed care organization that is in excess of the amount
12 paid to the pharmacy that filled the prescription.

13 Section 449.7. Pay for Performance Program.--(a) The
14 department shall establish a value-based program to incentivize
15 pharmacy providers and pharmacy benefit managers to meet agreed
16 upon quality metrics to optimize patient outcomes such as
17 medication adherence for disease states, including, but not
18 limited to:

19 (1) Diabetes.

20 (2) Hypertension.

21 (3) Cholesterol.

22 (b) The department may designate additional disease states
23 and quality metrics for the purposes of the program established
24 under subsection (a).

25 Section 449.8 Audits and limitations.--(a) If the correct
26 patient received the correct drug, on audit a pharmacy may not
27 be subject to a clawback any more than the professional fee for
28 errors that can be corrected internally, such as days supply,
29 origin code, early refill, transposed DEA or NPI number or other
30 scrivener's errors.

1 (b) Pharmacy benefit managers may not impose contractual
2 restrictions on pharmacies licensed in this Commonwealth to make
3 product deliveries and mail prescriptions to patients.

4 (c) A pharmacy benefit manager may not impose accreditation
5 requirements more stringent than those required by the State
6 Board of Pharmacy.

7 (d) Retroactive fees are prohibited and all fees must be
8 charged at the point of sale.

9 (e) A pharmacy benefit manager may not charge pharmacy
10 transmission fees.

11 (f) A pharmacy benefit manager may not mandate the use of a
12 pharmacy benefit manager-owned or affiliated mail-order facility
13 or offer concessions to use mail-order that all pharmacies may
14 not be permitted to offer, such as a ninety-day supply at a
15 reduced copayment.

16 (g) As used in this section, the term "clawback" shall mean
17 a claim or aggregate of claims for pharmacist services which are
18 directly or indirectly retroactively denied or reduced after
19 adjudication of the claim or aggregate of claims. The term does
20 not include denials or reductions if:

21 (1) the original claim was submitted fraudulently;

22 (2) the original claim payment was incorrect because the
23 pharmacy or pharmacist had already been paid for the pharmacist
24 services; or

25 (3) the pharmacist services were not properly rendered by
26 the pharmacy or pharmacist.

27 Section 2. This act shall take effect immediately.