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THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 818 Session of 1999

INTRODUCED BY EACHUS, MUNDY, RUFFING, YUDICHAK, COY, WOJNAROSKI, SOLOBAY, GEORGE, GIGLIOTTI, SHANER, ORIE, DONATUCCI, CALTAGIRONE, VAN HORNE, CORRIGAN, SEYFERT, GORDNER, McCALL, HALUSKA, SCRIMENTI, GRUCELA, TRAVAGLIO, ROBERTS, JOSEPHS, CASORIO, STABACK, MANDERINO, STEELMAN, SANTONI, LEVDANSKY, WILLIAMS, PESCI, TIGUE, READSHAW, SURRA, DALEY, DeWEESE, LAUGHLIN, BEBKO-JONES, HARHAI, L. I. COHEN, CAPPABIANCA, SAINATO, TRELLO, BELFANTI, M. COHEN, FREEMAN, CURRY, PRESTON, SERAFINI, MELIO, WALKO, TANGRETTI, KENNEY, MANN, DeLUCA, PISTELLA, ROONEY, JAMES, PLATTS, TRICH, BARD, BLAUM, STETLER, BARRAR, MICHLOVIC AND HORSEY, MARCH 10, 1999

REFERRED TO COMMITTEE ON FINANCE, MARCH 10, 1999

AN ACT

Amending the act of August 26, 1971 (P.L.351, No.91), entitled "An act providing for a State Lottery and administration thereof; authorizing the creation of a State Lottery Commission; prescribing its powers and duties; disposition of funds; violations and penalties therefor; exemption of prizes from State and local taxation and making an appropriation," amending certain definitions and deleting provisions relating to PACENET and certain deductibles.

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

Section 1. The definitions of "maximum annual income," "PACENET" and "program" in section 502 of the act of August 26, 1971 (P.L.351, No.91), known as the State Lottery Law, added November 21, 1996 (P.L.741, No.134), are amended to read:

Section 502. Definitions.

The following words and phrases when used in this chapter

shall have the meanings given to them in this section unless the context clearly indicates otherwise:

* * *

"Maximum annual income." For PACE eligibility, the term shall mean annual income which shall not exceed [$14,000] $16,000 in the case of single persons nor [$17,200] $19,200 in the case of the combined annual income of persons married to each other. Persons may, in reporting income to the Department of Aging, round the amount of each source of income and the income total to the nearest whole dollar, whereby any amount which is less than 50ç is eliminated.

* * *

["PACENET." The Pharmaceutical Assistance Contract for the Elderly Needs Enhancement Tier provided for in this chapter.]

* * *

"Program." The Pharmaceutical Assistance Contract for the Elderly (PACE) [and the Pharmaceutical Assistance Contract for the Elderly Needs Enhancement Tier (PACENET)] as established by this chapter, unless otherwise specified.

* * *

Section 2. Sections 519, 520(c) and 521(b) and (d) of the act, added November 21, 1996 (P.L.741, No.134), are amended to read:

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

(a) Establishment.--There is hereby established within the department a program to be known as the Pharmaceutical Assistance Contract for the Elderly Needs Enhancement Tier (PACENET).

(b) PACENET eligibility.--A claimant with an annual income

of not less than $14,000 and not more than $16,000 in the case of a single person and of not less than $17,200 and not more than $19,200 in the case of the combined income of persons married to each other shall be eligible for enhanced pharmaceutical assistance under this section. A person may, in reporting income to the department, round the amount of each source of income and the income total to the nearest whole dollar, whereby any amount which is less than 50ç is eliminated.

(c) Deductible.--Upon enrollment in PACENET, eligible claimants in the income ranges set forth in subsection (b) shall be required to meet an annual deductible in unreimbursed prescription drug expenses of $500 per person. To qualify for the deductible set forth in this subsection the prescription drug must be purchased for the use of the eligible claimant from a provider as defined in this chapter. The department, after consultation with the board, may approve an adjustment in the deductible on an annual basis.

(d) Copayment.--For eligible claimants under this section, the copayment schedule, which may be adjusted by the department on an annual basis after consultation with the board, shall be:

(i) eight dollars for noninnovator multiple source drugs as defined in section 702; or

(ii) fifteen dollars for single-source drugs and innovator multiple-source drugs as defined in section 702.]

Section 520. Board.

* * *

(c) Review.--Using the annual report submitted by the department pursuant to section 2102 and other appropriate data sources, the board shall conduct an annual review. The board

shall develop recommendations concerning any changes in the level of copayment[, deductible] or in the level of fees paid to participating pharmacists. The board shall review the department's therapeutic drug utilization review program on an ongoing basis. The board may also recommend other changes in the structure of the program and direct the department to enter into discussions with the private contractor concerning amendments to the contract, or the department may enter into such discussion if it deems necessary. The copayment [or deductible schedule] shall only be adjusted on an annual basis.

* * *

Section 521. Penalties.

* * *

(b) Civil penalty.--In addition to any appropriate criminal penalty for prohibited acts under this chapter whether or not that act constitutes a crime under 18 Pa.C.S. (relating to crimes and offenses), a provider who violates this section may be liable for a civil penalty in an amount not less than $500 and not more than $10,000 for each violation of this act which shall be collected by the department. Each violation constitutes a separate offense. If the department collects three or more civil penalties against the same provider, the provider shall be ineligible to participate in [either] PACE [or PACENET] for a period of one year. If more than three civil penalties are collected from any provider, the department may determine that the provider is permanently ineligible to participate in PACE [or PACENET].

* * *

(d) Repayment of gain.--Any provider, recipient or other person who is found guilty of a crime for violating this chapter

shall repay three times the value of the material gain received. In addition to the civil penalty authorized pursuant to subsection (b), the department may require the provider, recipient or other person to repay up to three times the value of any material gain to PACE [or PACENET].

Section 3. The definitions of "covered prescription drug," "PACENET" and "provider" in section 702 of the act, added November 21, 1996 (P.L.741, No.134), are amended to read:

Section 702. Definitions.

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

* * *

"Covered prescription drug." A legend drug, insulin, an insulin syringe or an insulin needle eligible for payment by the Commonwealth under PACE[, PACENET] or designated pharmaceutical programs.

* * *

["PACENET." The program established under section 519.]

"Provider." A licensed pharmacy or dispensing physician enrolled as a provider in PACE[, PACENET] or designated pharmaceutical programs.

* * *

Section 4. Sections 703, 704(b)(1), 705, 706(b), 709 and 2102 of the act, added November 21, 1996 (P.L.741, No.134), are amended to read:

Section 703. Rebate agreement.

(a) Requirement.--PACE[, PACENET] and designated pharmaceutical programs shall not reimburse for any covered prescription drug without a rebate agreement between the

department and the manufacturer of the covered prescription drug.

(b) Exception.--Subsection (a) shall not apply if the availability of the drug is essential to the health of eligible claimants as determined by the department.

(c) Agreements.--Manufacturers of prescription drugs reimbursed under PACE[, PACENET] and designated pharmaceutical programs must enter into a rebate agreement with the department under this chapter to obtain such reimbursement. Nothing in this chapter shall be deemed to affect or impair any agreement made under the former provisions of Chapter 6 of the act of August 14, 1991 (P.L.342, No.36), known as the Lottery Fund Preservation Act.

(d) Notice.--The department shall notify enrolled providers of PACE[, PACENET] and designated pharmaceutical programs on an annual basis and, as appropriate, of all manufacturers who have entered into a rebate agreement.

(e) Drug formulary.--Except as provided in section 512, there shall be no drug formulary, prior or retroactive approval system or any similar restriction imposed on the coverage of outpatient drugs made by manufacturers who have agreements in effect with the Commonwealth to pay rebates for drugs utilized in PACE [and PACENET], provided that such outpatient drugs were approved for marketing by the Food and Drug Administration. This subsection shall not apply to any act taken by the department pursuant to its therapeutic drug utilization review program under section 505.

Section 704. Terms of rebate agreement.

* * *

(b) Information.--

(1) The department shall report to each manufacturer, not later than 60 days after the end of each calendar quarter, information by zip code of provider on the total number of dosage units of each covered prescription drug reimbursed under PACE[, PACENET] and designated pharmaceutical programs during the quarter.

* * *

Section 705. Amount of rebate.

(a) Single-source drugs and innovator multiple-source drugs.--With respect to single-source drugs and innovator multiple-source drugs, each manufacturer shall remit a rebate to the Commonwealth. Except as otherwise provided in this section, the amount of the rebate to the Commonwealth per calendar quarter with respect to each dosage form and strength of single-source drugs and innovator multiple-source drugs shall be as follows:

(1) For quarters beginning after September 30, 1992, and ending before January 1, 1997, the product of the total number of units of each dosage form and strength reimbursed by PACE and General Assistance in the quarter and the difference between the average manufacturer price and 85% of that price, after deducting customary prompt payment discounts, for the quarter.

(2) For quarters beginning after December 31, 1996, the product of the total number of units of each dosage form and strength reimbursed by PACE[, PACENET] and designated pharmaceutical programs in the quarter and the difference between the average manufacturer price and 83% of that price, after deducting customary prompt payment discounts.

(b) Rebate for other drugs.--

(1) The amount of the rebate to the Commonwealth for a calendar quarter with respect to covered prescription drugs which are noninnovator multiple-source drugs shall be equal to the product of:

(i) the applicable percentage of the average manufacturer price, after deducting customary prompt payment discounts, for each dosage form and strength of such drugs for the quarter; and

(ii) the number of units of such form and dosage reimbursed by PACE and General Assistance in the quarter.

(2) For the purposes of paragraph (1), the applicable percentage for calendar quarters beginning after September 30, 1992, and ending before January 1, 1997, is 11%.

(c) Revised rebate for other drugs.--Beginning after December 31, 1996:

(1) The amount of the rebate to the Commonwealth for a calendar quarter with respect to covered prescription drugs which are noninnovator multiple-source drugs shall be the greater of the product of:

(i) the applicable percentage of the average manufacturer price, after deducting customary prompt payment discounts, for each dosage form and strength of such drugs for the quarter; and

(ii) the number of units of such form and dosage reimbursed by PACE[, PACENET] and designated pharmaceutical programs in the quarter.

(2) For purposes of paragraph (1), the applicable percentage is 17%.

(d) Drugs approved after act takes effect.--In the case of a covered outpatient drug approved for marketing after the

effective date of the act of August 14, 1991 (P.L.342, No.36), known as the Lottery Fund Preservation Act, any reference to January 1, 1991, shall be a reference to the first day of the first month during which the drug was marketed.

Section 706. Excessive pharmaceutical price inflation discount.

* * *

(b) Revised general rule.--A discount shall be provided to the department for all covered prescription drugs. The discount shall be calculated as follows:

(1) For each quarter for which a rebate under section 705(a) and (c) is to be paid after December 31, 1996, the average manufacturer price for each dosage form and strength of a covered prescription drug shall be compared to the average manufacturer price for the same form and strength in the previous calendar year and a percentage increase shall be calculated.

(2) For each quarter under paragraph (1), the average percentage increase in the Consumer Price Index-Urban over the same quarter in the previous calendar year shall be calculated.

(3) If the calculation under paragraph (1) is greater than the calculation under paragraph (2), the discount amount for each quarter shall be equal to the product of:

(i) the difference between the calculations under paragraphs (1) and (2); and

(ii) the total number of units of each dosage form and strength reimbursed by PACE[, PACENET] and designated pharmaceutical programs and the average manufacturer price reported by the manufacturer under section 704(c)(1).

* * *

Section 709. Disposition of funds.

(a) PACE [and PACENET].--Money received under this chapter in connection with PACE [and PACENET] shall be deposited in the Pharmaceutical Assistance Contract for the Elderly Fund.

(b) Designated pharmaceutical programs.--Money received under this chapter in connection with designated pharmaceutical programs shall be treated as a refund of expenditures to the appropriation which originally provided the funding for the pharmaceutical purchase.

Section 2102. Annual report to General Assembly.

(a) Submission of report.--The department shall submit a report no later than April 1 of each year to the chairman and minority chairman of the Aging and Youth Committee of the Senate, the chairman and minority chairman of the Aging and Youth Committee of the House of Representatives and the Pharmaceutical Assistance Review Board.

(b) Collection of data.--The department shall maintain monthly statistical records on PACE [and PACENET], including the level of participation and any patterns of unusual drug usage for purposes of formulating the annual report.

(c) Information for inclusion in annual report.--The annual report shall contain, but not be limited to, all information relating to:

(1) The number of persons served by PACE [and PACENET] and their counties of residence.

(2) A breakdown of the numbers and kinds of pharmaceuticals used.

(3) The cost of prescriptions.

(4) An estimate of actual expenses incurred by

pharmacists participating in the program.

(5) The results obtained by the drug education program under section 522.

(6) Information regarding the operation of the therapeutic drug utilization review system for the prior calendar year, which shall include, at a minimum:

(i) The scope of physician and pharmacist participation in the system.

(ii) A description of claimant response to the system.

(iii) Data for each month of the covered period regarding the number of prescription revisions based on utilization review, including drug information, cost savings and the policy used by the department to make utilization review decisions.

(7) Information on the existence and scope of fraudulent activity and violations of this act by providers participating in PACE [and PACENET].

(8) Information regarding the financial status of PACE [and PACENET], including, but not limited to, the adequacy of any applicable deductible and copayment levels, based upon the financial experience and projections of PACE [and PACENET].

Section 5. This act shall take effect in 60 days.