

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 941 Session of 2019

INTRODUCED BY HEFFLEY, MATZIE, NEILSON, WARNER, BURGOS, SAINATO, FRANKEL, READSHAW, BARRAR, LONGIETTI, MILLARD, KEEFER, SIMS, DeLUCA, BERNSTINE, MULLINS, CRUZ, WHEELAND, MARSHALL, SCHWEYER, MOUL, BROWN, STRUZZI, KENYATTA, PYLE, McCLINTON, DEASY, EVERETT, KNOWLES, SCHMITT, HERSHEY, KLUNK, T. DAVIS, DUSH, FLYNN, BURNS, GREINER, KAUFFMAN, SAYLOR, SCHLOSSBERG, RIGBY, McNEILL, KORTZ, OWLETT, MASSER, ISAACSON, GAYDOS, QUINN, BOYLE, KOSIEROWSKI, PASHINSKI, MADDEN, WILLIAMS, ULLMAN, THOMAS, STURLA, WENTLING, TOOHIL AND GABLER, MAY 7, 2019

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, NOVEMBER 19, 2019

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 public assistance,~~  
4 ~~providing for financial disclosures for pharmacy services.~~

5 AMENDING THE ACT OF JUNE 13, 1967 (P.L.31, NO.21), ENTITLED "AN <--  
6 ACT TO CONSOLIDATE, EDITORIALY REVISE, AND CODIFY THE PUBLIC  
7 WELFARE LAWS OF THE COMMONWEALTH," IN PUBLIC ASSISTANCE,  
8 FURTHER PROVIDING FOR MEDICAL ASSISTANCE PHARMACY SERVICES.

9 The General Assembly of the Commonwealth of Pennsylvania

10 hereby enacts as follows:

11 ~~Section 1. The act of June 13, 1967 (P.L.31, No.21), known~~ <--  
12 ~~as the Human Services Code, is amended by adding a section to~~  
13 ~~read:~~

14 ~~Section 449.1. Financial Disclosures for Pharmacy~~  
15 ~~Services. (a) A pharmacy benefits manager that contracts with~~  
16 ~~a medical assistance managed care organization under contract~~

1 ~~with the department shall be prohibited from utilizing a~~  
2 ~~confidentiality provision which would in effect prohibit~~  
3 ~~disclosure of information to the medical assistance managed care~~  
4 ~~organization and the department upon request of the medical~~  
5 ~~assistance managed care organization or the department.~~

6 ~~(b) Requests by the department may include the payment~~  
7 ~~methodology for the pharmacy benefits manager which must include~~  
8 ~~the actual amount paid by the pharmacy benefits manager to a~~  
9 ~~pharmacy for dispensing an outpatient covered drug or medical~~  
10 ~~supply item, including, at a minimum, the ingredient cost and~~  
11 ~~dispensing fee and any other administrative fees.~~

12 ~~(c) A medical assistance managed care organization that~~  
13 ~~assigns financial responsibility for determining the dispensing~~  
14 ~~pharmacy payment methodology, including the ingredient cost and~~  
15 ~~dispensing fee, shall upon request disclose to the department~~  
16 ~~all financial terms and payment arrangements that apply between~~  
17 ~~the medical assistance managed care organization and the~~  
18 ~~pharmacy benefits manager annually and within ten days of any~~  
19 ~~changes to the financial terms and payment arrangements. For the~~  
20 ~~purposes of this section, a pharmacy benefits manager which~~  
21 ~~contracts with a medical assistance managed care organization~~  
22 ~~shall maintain records sufficient to ensure compliance with this~~  
23 ~~section and to provide information for pharmaceuticals dispensed~~  
24 ~~and paid for by medical assistance to the department, including~~  
25 ~~the information required under Chapter 7 of the act of November~~  
26 ~~21, 2016 (P.L.1318, No.169), known as the "Pharmacy Audit~~  
27 ~~Integrity and Transparency Act."~~

28 ~~(d) A medical assistance managed care organization may use a~~  
29 ~~pharmacy benefits manager to process prescription claims only if~~  
30 ~~the medical assistance managed care organization has received~~

1 ~~advanced written approval by the department.~~

2 ~~(e) A medical assistance managed care organization shall:~~

3 ~~(1) Indicate to the department its intent to use a pharmacy~~  
4 ~~benefits manager.~~

5 ~~(2) Identify:~~

6 ~~(i) the proposed pharmacy benefits manager;~~

7 ~~(ii) the medical assistance managed care organization's~~  
8 ~~payment methodology for payment to the pharmacy benefits~~  
9 ~~manager;~~

10 ~~(iii) the pharmacy benefits manager's payment methodology~~  
11 ~~for actual payment to the providers of covered outpatient drugs;~~  
12 ~~and~~

13 ~~(iv) the ownership of the proposed pharmacy benefits~~  
14 ~~manager.~~

15 ~~(3) Provide for each outpatient drug encounter the amount~~  
16 ~~paid to the pharmacy benefits manager by the medical assistance~~  
17 ~~managed care organization and the actual amount paid by the~~  
18 ~~pharmacy benefits manager to the dispensing pharmacy or~~  
19 ~~prescribing provider.~~

20 ~~(4) Report differences between the amount paid by the~~  
21 ~~medical assistance managed care organization to the pharmacy~~  
22 ~~benefits manager and the amount paid by the pharmacy benefits~~  
23 ~~manager to the providers of covered outpatient drugs as~~  
24 ~~administrative fees.~~

25 ~~(5) Report all pharmacy benefits manager administrative~~  
26 ~~fees, including the difference in amounts paid as described in~~  
27 ~~clause (4), in a format designated by the department.~~

28 ~~(6) Submit a written description of the procedures that the~~  
29 ~~medical assistance managed care organization will use to monitor~~  
30 ~~the pharmacy benefits manager for compliance with this section.~~

1 ~~(7) Upon request by the department, conduct an independent~~  
2 ~~audit of the pharmacy benefits manager's transparent pricing~~  
3 ~~arrangement.~~

4 ~~(8) Develop, implement and maintain a second level pricing~~  
5 ~~dispute resolution process that provides for settlement of a~~  
6 ~~pharmacy benefits manager network provider's pricing dispute~~  
7 ~~with the pharmacy benefits manager.~~

8 ~~(9) Submit to the department, prior to implementation, the~~  
9 ~~medical assistance managed care organization's policies and~~  
10 ~~procedures relating to the resolution of pharmacy benefits~~  
11 ~~manager provider pricing disputes.~~

12 ~~(f) The department shall reimburse pharmacies in the fee~~  
13 ~~for service delivery system and pharmacies within a managed care~~  
14 ~~organization's network as follows:~~

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

17 ~~(i) The NADAC per unit with the addition of a professional~~  
18 ~~dispensing fee. The professional dispensing fee shall be no less~~  
19 ~~than the fee for service dispensing fee approved by the Centers~~  
20 ~~for Medicare and Medicaid Services.~~

21 ~~(ii) The pharmacy's usual and customary charge for the drug~~  
22 ~~dispensed.~~

23 ~~(2) If the NADAC per unit is unavailable, the payment to the~~  
24 ~~pharmacy shall be the lower of the following amounts:~~

25 ~~(i) The wholesale acquisition cost with the addition of a~~  
26 ~~professional dispensing fee. The professional dispensing fee~~  
27 ~~shall be no less than the fee for service dispensing fee~~  
28 ~~approved by the Centers for Medicare and Medicaid Services.~~

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

1 ~~(g) Pharmacies in this Commonwealth shall be reimbursed by~~  
2 ~~the department through the medical assistance program for~~  
3 ~~specialty medications dispensed to medical assistance eligible~~  
4 ~~patients that require special handling and ongoing patient~~  
5 ~~support and interventions to ensure the desired patient~~  
6 ~~outcomes. The medications that are to be reimbursed as specialty~~  
7 ~~medications shall be selected and published by the department.~~  
8 ~~Reimbursement shall consist of the following:~~

9 ~~(1) Reimbursement of an estimate of the dispensing~~  
10 ~~pharmacy's cost of goods, based upon a national survey based~~  
11 ~~reference price that is available throughout the pharmacy~~  
12 ~~community, such as wholesale acquisition cost, average wholesale~~  
13 ~~price or NADAC. Selection of the appropriate and most equitable~~  
14 ~~reference pricing for the specialty medication list shall be~~  
15 ~~made by the department.~~

16 ~~(2) A variable care management fee, based upon each~~  
17 ~~patient's primary disease state that is being treated with a~~  
18 ~~medication on the specialty medication list. The care management~~  
19 ~~fees shall be determined. Each care management fee shall be~~  
20 ~~based upon the disease state being treated with a specialty~~  
21 ~~medication and shall describe the activities, interventions,~~  
22 ~~data gathering and reporting that must be completed by each~~  
23 ~~pharmacy before it can invoice a care management fee related to~~  
24 ~~the dispensing of a medication on the specialty medication list.~~

25 ~~(h) This section shall apply to all contracts and agreements~~  
26 ~~for pharmacy benefits management services executed or renewed on~~  
27 ~~or after the effective date of this section.~~

28 ~~(i) Any information disclosed or produced by a pharmacy~~  
29 ~~benefits manager or a medical assistance managed care~~  
30 ~~organization to the department under this section shall not be~~

1 ~~subject to the act of February 14, 2008 (P.L.6, No.3), known as~~  
2 ~~the Right to Know Law.~~

3 ~~(j) As used in this section, the following words and phrases~~  
4 ~~shall have the meanings given to them in this subsection:~~

5 ~~"NADAC" means the National Average Drug Acquisition Cost.~~

6 ~~"NADAC per unit" means the current National Average Drug~~  
7 ~~Acquisition Cost per unit.~~

8 ~~"Pharmacy benefits management" means any of the following:~~

9 ~~(1) Procurement of prescription drugs at a negotiated~~  
10 ~~contracted rate for distribution within this Commonwealth to~~  
11 ~~covered individuals.~~

12 ~~(2) Administration or management of prescription drug~~  
13 ~~benefits provided by a covered entity for the benefit of covered~~  
14 ~~individuals.~~

15 ~~(3) Administration of pharmacy benefits, including:~~

16 ~~(i) Operating a mail service pharmacy.~~

17 ~~(ii) Claims processing.~~

18 ~~(iii) Managing a retail pharmacy network management.~~

19 ~~(iv) Paying claims to pharmacies for prescription drugs~~  
20 ~~dispensed to covered individuals via retail, specialty or mail-~~  
21 ~~order pharmacy.~~

22 ~~(v) Developing and managing a clinical formulary,~~  
23 ~~utilization management and quality assurance programs.~~

24 ~~(vi) Rebate contracting and administration.~~

25 ~~(vii) Managing a patient compliance, therapeutic~~  
26 ~~intervention and generic substitution program.~~

27 ~~(viii) Operating a disease management program.~~

28 ~~(ix) Setting pharmacy reimbursement pricing and~~  
29 ~~methodologies, including maximum allowable cost, and determining~~  
30 ~~single or multiple source drugs.~~

1 ~~"Pharmacy benefits manager" means a person, business or other~~  
2 ~~entity that performs pharmacy benefits management. The term~~  
3 ~~shall include a wholly owned subsidiary of a medical assistance~~  
4 ~~managed care organization that performs pharmacy benefits~~  
5 ~~management.~~

6 Section 2. ~~This act shall take effect in 60 days.~~

7 SECTION 1. SECTION 449 OF THE ACT OF JUNE 13, 1967 (P.L.31, <--  
8 NO.21), KNOWN AS THE HUMAN SERVICES CODE, IS AMENDED TO READ:

9 SECTION 449. MEDICAL ASSISTANCE PHARMACY SERVICES.--(A) ANY  
10 MANAGED CARE [ENTITY] ORGANIZATION UNDER CONTRACT TO THE  
11 DEPARTMENT MUST CONTRACT ON AN EQUAL BASIS WITH ANY PHARMACY  
12 QUALIFIED TO PARTICIPATE IN THE MEDICAL ASSISTANCE PROGRAM THAT  
13 IS WILLING TO COMPLY WITH THE MANAGED CARE [ENTITY'S]  
14 ORGANIZATION'S PHARMACY PAYMENT RATES AND TERMS AND TO ADHERE TO  
15 QUALITY STANDARDS ESTABLISHED BY THE MANAGED CARE [ENTITY]  
16 ORGANIZATION.

17 (B) THE DEPARTMENT MAY CONDUCT AN AUDIT OR REVIEW OF AN  
18 ENTITY. IN THE COURSE OF AN AUDIT OR REVIEW UNDER THIS  
19 SUBSECTION, A MANAGED CARE ORGANIZATION UTILIZING A PHARMACY  
20 BENEFIT MANAGER SHALL PROVIDE MEDICAL ASSISTANCE-SPECIFIC  
21 INFORMATION FROM A PHARMACY CONTRACT OR AGREEMENT TO THE  
22 DEPARTMENT.

23 (C) A CONTRACT OR AGREEMENT BETWEEN AN ENTITY AND A PHARMACY  
24 MAY NOT INCLUDE ANY OF THE FOLLOWING:

25 (1) A CONFIDENTIALITY PROVISION THAT PROHIBITS THE  
26 DISCLOSURE OF INFORMATION TO THE DEPARTMENT.

27 (2) ANY PROVISION THAT RESTRICTS THE DISCLOSURE OF  
28 INFORMATION TO OR COMMUNICATION WITH A MANAGED CARE ORGANIZATION  
29 OR THE DEPARTMENT.

30 (D) AN ENTITY SHALL MAINTAIN RECORDS SUFFICIENT TO DISCLOSE,

1 UPON THE DEPARTMENT'S REQUEST, INFORMATION REGARDING THE  
2 PROVISION OF PHARMACY SERVICES ELIGIBLE FOR PAYMENT BY THE  
3 MEDICAL ASSISTANCE PROGRAM.

4 (E) INFORMATION DISCLOSED OR PRODUCED BY AN ENTITY TO THE  
5 DEPARTMENT UNDER THIS SECTION SHALL NOT BE SUBJECT TO THE ACT OF  
6 FEBRUARY 14, 2008 (P.L.6, NO.3), KNOWN AS THE RIGHT-TO-KNOW LAW.

7 (F) IF AN ENTITY APPROVES A CLAIM FOR PAYMENT UNDER THE  
8 MEDICAL ASSISTANCE PROGRAM, THE ENTITY MAY NOT RETROACTIVELY  
9 DENY OR MODIFY THE PAYMENT UNLESS ANY OF THE FOLLOWING APPLY:

10 (1) THE CLAIM WAS FRAUDULENT.

11 (2) THE CLAIM WAS DUPLICATIVE OF A PREVIOUSLY PAID CLAIM.

12 (3) THE PHARMACY DID NOT DISPENSE THE PHARMACY SERVICE ON  
13 THE CLAIM.

14 (G) A MANAGED CARE ORGANIZATION OR PHARMACY BENEFIT MANAGER  
15 MAY NOT DO ANY OF THE FOLLOWING:

16 (1) MANDATE THAT A MEDICAL ASSISTANCE RECIPIENT USE A  
17 SPECIFIC PHARMACY OR OTHER ENTITY IF ANY OF THE FOLLOWING APPLY:

18 (I) THE MANAGED CARE ORGANIZATION OR PHARMACY BENEFIT  
19 MANAGER HAS AN OWNERSHIP INTEREST IN THE PHARMACY OR OTHER  
20 ENTITY.

21 (II) THE PHARMACY OR OTHER ENTITY HAS AN OWNERSHIP INTEREST  
22 IN THE MANAGED CARE ORGANIZATION OR PHARMACY BENEFIT MANAGER.

23 (2) PROVIDE AN INCENTIVE TO A MEDICAL ASSISTANCE RECIPIENT  
24 TO ENCOURAGE THE USE OF A SPECIFIC PHARMACY.

25 (H) A PHARMACY BENEFIT MANAGER OR PHARMACY SERVICES  
26 ADMINISTRATION ORGANIZATION MAY NOT DO ANY OF THE FOLLOWING:

27 (1) REQUIRE THAT A PHARMACIST OR PHARMACY PARTICIPATE IN A  
28 NETWORK MANAGED BY THE PHARMACY BENEFIT MANAGER OR PHARMACY  
29 SERVICES ADMINISTRATION ORGANIZATION AS A CONDITION FOR THE  
30 PHARMACIST OR PHARMACY TO PARTICIPATE IN ANOTHER NETWORK MANAGED

1 BY THE SAME PHARMACY BENEFIT MANAGER OR PHARMACY SERVICES  
2 ADMINISTRATION ORGANIZATION.

3 (2) AUTOMATICALLY ENROLL OR DISENROLL A PHARMACIST OR  
4 PHARMACY WITHOUT CAUSE IN A CONTRACT OR MODIFY AN EXISTING  
5 AGREEMENT WITHOUT WRITTEN AGREEMENT OF THE PHARMACIST OR  
6 PHARMACY.

7 (3) CHARGE OR RETAIN A DIFFERENTIAL BETWEEN WHAT IS BILLED  
8 TO A MANAGED CARE ORGANIZATION AS A REIMBURSEMENT FOR A PHARMACY  
9 SERVICE AND WHAT IS PAID TO PHARMACIES BY THE PHARMACY BENEFIT  
10 MANAGER OR PHARMACY SERVICES ADMINISTRATION ORGANIZATION FOR THE  
11 PHARMACY SERVICE.

12 (4) CHARGE PHARMACY TRANSMISSION FEES.

13 (I) A MANAGED CARE ORGANIZATION OR PHARMACY BENEFIT MANAGER  
14 SHALL PROVIDE PAYMENT FOR A PHARMACY SERVICE THAT IS A COVERED  
15 BENEFIT IF THE PHARMACY SERVICE IS PERFORMED BY A LICENSED  
16 PHARMACIST IN ACCORDANCE WITH ALL OF THE FOLLOWING:

17 (1) THE PHARMACY SERVICE PERFORMED IS WITHIN THE SCOPE OF  
18 PRACTICE OF THE LICENSED PHARMACIST.

19 (2) THE MANAGED CARE ORGANIZATION OR PHARMACY BENEFIT  
20 MANAGER WOULD COVER THE PHARMACY SERVICE IF THE PHARMACY SERVICE  
21 WAS PERFORMED BY A PHYSICIAN, AN ADVANCED PRACTICE REGISTERED  
22 NURSE OR A PHYSICIAN ASSISTANT.

23 (J) AS USED IN THIS SECTION, THE FOLLOWING WORDS AND PHRASES  
24 SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SUBSECTION:

25 "ENTITY" MEANS A PHARMACY, PHARMACY BENEFIT MANAGER, PHARMACY  
26 SERVICES ADMINISTRATION ORGANIZATION OR OTHER ENTITY THAT  
27 MANAGES, PROCESSES, INFLUENCES THE PAYMENT FOR OR DISPENSES  
28 PHARMACY SERVICES TO MEDICAL ASSISTANCE RECIPIENTS IN THE  
29 MANAGED CARE DELIVERY SYSTEM.

30 "PHARMACY BENEFIT MANAGEMENT" MEANS ANY OF THE FOLLOWING:

1 (1) THE PROCUREMENT OF PRESCRIPTION DRUGS AT A NEGOTIATED  
2 CONTRACTED RATE FOR DISTRIBUTION WITHIN THIS COMMONWEALTH.

3 (2) THE ADMINISTRATION OR MANAGEMENT OF PRESCRIPTION DRUG  
4 BENEFITS PROVIDED BY A MANAGED CARE ORGANIZATION.

5 (3) THE ADMINISTRATION OF PHARMACY BENEFITS, INCLUDING ANY  
6 OF THE FOLLOWING:

7 (I) OPERATING A MAIL-SERVICE PHARMACY.

8 (II) PROCESSING CLAIMS.

9 (III) MANAGING A RETAIL PHARMACY NETWORK.

10 (IV) PAYING CLAIMS TO PHARMACIES, INCLUDING RETAIL,  
11 SPECIALTY OR MAIL-ORDER PHARMACIES, FOR PRESCRIPTION DRUGS  
12 DISPENSED TO MEDICAL ASSISTANCE RECIPIENTS RECEIVING SERVICES IN  
13 THE MANAGED CARE DELIVERY SYSTEM VIA A RETAIL OR MAIL-ORDER  
14 PHARMACY.

15 (V) DEVELOPING AND MANAGING A CLINICAL FORMULARY OR  
16 PREFERRED DRUG LIST, UTILIZATION MANAGEMENT OR QUALITY ASSURANCE  
17 PROGRAMS.

18 (VI) REBATE CONTRACTING AND ADMINISTRATION.

19 (VII) MANAGING A PATIENT COMPLIANCE, THERAPEUTIC  
20 INTERVENTION AND GENERIC SUBSTITUTION PROGRAM.

21 (VIII) OPERATING A DISEASE MANAGEMENT PROGRAM.

22 (IX) SETTING PHARMACY PAYMENT PRICING AND METHODOLOGIES,  
23 INCLUDING MAXIMUM ALLOWABLE COST AND DETERMINING SINGLE OR  
24 MULTIPLE SOURCE DRUGS.

25 "PHARMACY BENEFIT MANAGER" MEANS A PERSON, BUSINESS OR OTHER  
26 ENTITY THAT PERFORMS PHARMACY BENEFIT MANAGEMENT. THE TERM  
27 INCLUDES A WHOLLY-OWNED SUBSIDIARY OF A MANAGED CARE  
28 ORGANIZATION THAT PERFORMS PHARMACY BENEFITS MANAGEMENT.

29 "PHARMACY SERVICES ADMINISTRATION ORGANIZATION" MEANS A  
30 PERSON, BUSINESS OR OTHER ENTITY THAT PERFORMS ANY OF THE

1 FOLLOWING:

2 (1) NEGOTIATES OR CONTRACTS WITH A MANAGED CARE ORGANIZATION  
3 OR PHARMACY BENEFIT MANAGER ON BEHALF OF ITS PHARMACY MEMBERS.

4 (2) NEGOTIATES PAYMENT RATES, PAYMENTS OR AUDIT TERMS ON  
5 BEHALF OF ITS PHARMACY MEMBERS.

6 (3) COLLECTS OR RECONCILES PAYMENTS ON BEHALF OF ITS  
7 PHARMACY MEMBERS.

8 SECTION 2. THE AMENDMENT OF SECTION 449 OF THE ACT SHALL  
9 APPLY TO ANY AGREEMENT OR CONTRACT RELATING TO PHARMACY SERVICES  
10 TO MEDICAL ASSISTANCE RECIPIENTS IN THE MANAGED CARE DELIVERY  
11 SYSTEM ENTERED INTO OR AMENDED ON OR AFTER THE EFFECTIVE DATE OF  
12 THIS SECTION.

13 SECTION 3. THIS ACT SHALL TAKE EFFECT IN 60 DAYS.