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THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2941 Session of 1996

INTRODUCED BY STURLA, ARGALL, THOMAS, COLAFELLA, GORDNER, ROONEY, LAUGHLIN, LEVDANSKY, ITKIN, GEORGE, TIGUE, TRELLO, COLAIZZO, PLATTS, VEON, SCRIMENTI, CORPORA, MANDERINO, BOSCOLA, VAN HORNE, MICOZZIE, BELARDI, FAJT, RAMOS, CURRY, ROBERTS, STEELMAN, SAINATO, MERRY, TRICH, KING, KUKOVICH, WALKO, PETRARCA, MARKOSEK, ROBINSON, HALUSKA, CORRIGAN AND COWELL, OCTOBER 3, 1996

REFERRED TO COMMITTEE ON AGING AND YOUTH, OCTOBER 3, 1996

AN ACT

Amending the act of August 14, 1991 (P.L.342, No.36), entitled "An act providing for the preservation of the State Lottery Fund; further providing for pharmaceutical assistance for the elderly; further providing for transportation assistance to the elderly; providing for pharmaceutical purchasing; conferring powers and duties upon the Department of Aging, the Department of Revenue and the Department of Transportation; imposing penalties; and making repeals," further defining "maximum annual income"; defining "PACE pharmacist"; providing for the use of brand name drugs, for submission of prescription plan and insurance information, for rebates and for pharmaceutical assistance for elderly persons whose incomes exceed income limitations.

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

Section 1. The definition of "maximum annual income" in section 302 of the act of August 14, 1991 (P.L.342, No.36), known as the Lottery Fund Preservation Act, is amended and the section is amended by adding a definition to read:

Section 302. 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." Annual income as determined by the department.

(1) Except as provided in paragraph (2), such amount shall not exceed [$13,000] $14,000 in the case of single persons nor [$16,200] $17,200 in the case of the combined annual income of married persons.

(2) If this chapter takes effect before September 1, 1991, the following shall apply:

(i) Before September 1, 1991, such amount shall not exceed $12,000 in the case of single persons nor $15,000 in the case of the combined annual income of married persons.

(ii) After August 31, 1991, such amount shall not exceed [$13,000] $14,000 in the case of single persons nor [$16,200] $17,200 in the case of the combined annual income of married persons.

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"PACE pharmacist." A pharmacist employed by a pharmacy that is enrolled as a provider in the PACE Program or the General Assistance Program.

* * *

Section 2. Section 303(h)(6), (9) and (10) of the act, amended December 9, 1992 (P.L.792, No.128), are amended and subsection (h) is amended by adding a paragraph to read:

Section 303. Responsibilities of department.

* * *

(h) Program criteria.--The program shall include the

following criteria:

* * *

(6) The program shall consist of payments to pharmacies on behalf of eligible claimants for the average wholesale cost minus 5% of drugs, insulin, insulin syringes and insulin needles which exceed the copayment plus a dispensing fee of at least [$2.75] $3.10 or the dispensing fee established by the department by regulation, whichever is greater.

* * *

(9) Notwithstanding any other statute or regulation, if an A-rated generic therapeutically equivalent drug is available for dispensing to a claimant, the provider shall dispense the A-rated generic therapeutically equivalent drug to the claimant. The department shall not reimburse providers for brand name products except in the following circumstances:

(i) There is no A-rated generic therapeutically equivalent drug available on the market. This subparagraph does not apply to the lack of availability of an A-rated generic therapeutically equivalent drug in the providing pharmacy, unless it can be shown to the department that the provider made reasonable attempts to obtain the A-rated generic therapeutically equivalent drug or that there was an unforeseeable demand and depletion of the supply of the A-rated generic therapeutically equivalent drug. In either case, the department shall reimburse the provider for the average wholesale cost plus a dispensing fee based on the least expensive A-rated generic therapeutically equivalent drug for the brand drug dispensed.

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

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

(iv) At the time of dispensing, the provider has a prescription on which the brand name drug dispensed is billed to the program by the provider at a usual and customary charge which is equal to or less than the least expensive usual and customary charge of any A-rated generic therapeutically equivalent drug reasonably available on the market to the provider.

[(v) At the time of dispensing, the provider has a prescription on which the prescriber has handwritten "brand necessary" or "brand medically necessary" on the prescription.]

(10) If a claimant chooses not to accept the A-rated generic therapeutically equivalent drug required by paragraph (9), the claimant shall be liable for the copayment and 70% of the average wholesale cost of the brand name drug. <u>This paragraph shall not apply if the prescriber can demonstrate</u>

in writing on a form provided by the department that:

(i) The claimant is in danger of an adverse reaction from use of the generic therapeutically equivalent drug required under paragraph (9).

(ii) Use of the prescribed brand name drug would eliminate the danger of the adverse reaction.

* * *

(21) Insurers and prescription plans shall submit to the department on an ongoing basis in a manner and format acceptable to the department a listing of persons whose prescription drug costs are covered by such insurance or plan. This information shall be used by the department only for purposes of identifying eligible claimants whose prescription drug costs may be covered by another plan of assistance or insurance.

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Section 3. The act is amended by adding a chapter to read:

CHAPTER 4

PACE EXTRA

Section 401. 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:

"Income." As defined in section 302.

"PACE pharmacy." A pharmacy that is enrolled as a provider in the PACE Program or the General Assistance Program.

"PACE Program." The program under Chapter 3.

"Prescription drug." As defined in section 302.

Section 402. PACE Extra Program.

(a) General rule.--The department shall establish and

implement a PACE Program component, to be known as PACE Extra. PACE Extra shall be made available to those individuals or married couples whose annual incomes exceed the limits under the definition of "maximum annual income" in section 302, but otherwise qualify for the PACE Program.

(b) Program eligibility.--The department shall adopt regulations relating to the determination of eligibility of prospective PACE Extra participants. Once eligibility is established, a PACE Extra participant, upon payment of an annual $35 enrollment fee, shall be issued a PACE Extra card for use in tracking the participant's prescription drug expenditures.

(c) Program operation.--A PACE Extra participant shall qualify for the PACE Program upon expending money for prescription drugs such that if the participant's annual income were to be reduced by the costs of the prescription drug purchases, the participant would meet the income requirements under the definition of "maximum annual income" in section 302. The provisions of Chapter 3 shall apply to PACE Extra participants who qualify for the PACE Program by meeting the requirements of this section.

(d) Limitation.--Pharmaceutical assistance under this act shall not be provided to a PACE Extra participant unless sufficient prescription drug expenditures are made to reduce the participant's annual income as described in subsection (c).

(e) Enrollment fee.--The $35 annual enrollment fee shall be paid to the department. The department shall use the enrollment fee collected to cover PACE Extra administrative costs, including the development of a tracking system described in section 403. The amount of the fee shall be used as an offset against a PACE Extra participant's annual income.

Section 403. Tracking system.

The department shall develop, implement and administer a tracking system to ascertain the amount PACE Extra participants spend on prescription drugs. A feature of the tracking system shall be the PACE Extra cards issued to participants. When a participant makes a prescription drug purchase at a PACE pharmacy, the participant shall present his PACE Extra card for the purpose of the pharmacy tallying and maintaining a record of the amounts spent on prescription drugs. The pharmacy may charge the participant a 35ç tracking fee for each prescription drug purchase. Records generated through the use of PACE Extra cards shall be available to the department to determine participants' eligibility for the PACE Program.

Section 4. The definition of "Producer Price Index for Pharmaceuticals" in section 602 of the act, added December 9, 1992 (P.L.792, No.128), is amended and the section is amended by adding definitions to read:

Section 602. 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:

* * *

"Best price."

(1) For current covered prescription drugs, the lesser of:

(i) the lowest price available for the drug in this Commonwealth from the manufacturer to any wholesaler, retailer, provider, private entity or governmental entity doing business in this Commonwealth during the quarter; or

(ii) the lowest price available for the drug, as of July 1, 1995, in this Commonwealth from the manufacturer to any wholesaler, retailer, provider, private entity or governmental entity doing business in this Commonwealth increased by the Consumer Price Index-Urban from July 1995 to the month before the beginning of the calendar quarter involved.

(2) For new drugs approved for marketing after July 1, 1995, the lesser of:

(i) the lowest price available for the drug in this Commonwealth from the manufacturer to any wholesaler, retailer, provider, private entity or governmental entity doing business in this Commonwealth during the quarter; or

(ii) the lowest price available for the drug, during the first month in which the drug was marketed, in this Commonwealth from the manufacturer to any wholesaler, retailer, provider, private entity or governmental entity doing business in this Commonwealth, increased by the percentage increase in the Consumer Price Index-Urban from the first day of the first month of marketing to the beginning of the calendar quarter involved.

(3) The term excludes any price less than 8% of the average manufacturer price in the same quarter for which the average manufacturer price is computed.

(4) The term includes Federal supply schedule prices.

(5) Best price shall be determined on a unit basis and shall be adjusted by the manufacturer if cumulative discounts, rebates or other arrangements subsequently adjust the prices actually realized. For capitated sales, the

allocation of the discount shall be made proportionally to the dollar value of the units of each drug sold under the capitated arrangement.

* * *

"Consumer Price Index-Urban." The index of consumer prices developed and updated by the Bureau of Labor Statistics of the United States Department of Labor.

* * *

["Producer Price Index for Pharmaceuticals." The prescription drug producer price index compiled by the Bureau of Labor Statistics of the United States Department of Labor for measuring average changes in selling prices received by domestic drug manufacturers.]

* * *

Section 5. Sections 604(c), 605(a) and 605.1(a) of the act, added December 9, 1992 (P.L.792, No.128), are amended to read:

Section 604. Terms of rebate agreement.

* * *

(c) Manufacturer provision of price information.--

(1) Each manufacturer with an agreement in effect under this chapter shall report [the average manufacturer price for all covered prescription drugs produced by that manufacturer] to the department not later than 30 days after the last day of each quarter[.] all of the following:

(i) The average manufacturer price.

(ii) For single-source drugs and innovator multiple source drugs:

(A) the manufacturer's best price for covered prescription drugs for the quarter; and

(B) the best price in effect on July 1, 1995.

(iii) For new drugs, the best price in effect during the first month of marketing the new drug.

* * *

Section 605. 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:] equal to the product of the total number of units of each dosage form and strength reimbursed by the PACE Program and the General Assistance Program in the quarter and the following:

(1) For quarters beginning after [December 31, 1990, and ending before October 1, 1992,] April 1996 [the product of the total number of units of each dosage form and strength reimbursed by the PACE Program and the General Assistance Program in the quarter and the difference between the average manufacturer price and 87.5% of that price, after deducting customary prompt payment discounts, for the quarter.] the greater of the following:

(i) The difference between the average manufacturer price and 85% of that price after deducting customary prompt payment discounts for the quarter.

(ii) The difference between the average manufacturer price for a drug and the best price. For calendar quarters beginning after April 1, 1996, and ending before January 1, 1997, the rebate under this subparagraph shall not exceed 25% of the average manufacturer price. For

calendar quarters beginning after December 31, 1996, and ending before January 1, 1998, the rebate under this subparagraph shall not exceed 50% of the average manufacturer price.

* * *

Section 605.1. Excessive pharmaceutical price inflation discount.

(a) 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 605(a) and (b) is to be paid after December 31, 1991, 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 [Producer Price Index for Pharmaceuticals] 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 the PACE Program and General Assistance Program and the average manufacturer price reported by the manufacturer under section 604(c)(1).

* * *

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