

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 753 Session of  
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DeLUCA, TRICH, STERN AND MICHLOVIC, MARCH 9, 1999

REFERRED TO COMMITTEE ON INSURANCE, MARCH 9, 1999

AN ACT

1 Providing for pharmacy services in health insurance policies and  
2 employee benefit plans and for the rights of pharmacists and  
3 persons enrolled in health insurance plans and employee  
4 benefit plans; promoting competition, choice and availability  
5 in the purchase of prescription drugs and pharmaceutical  
6 services; and imposing penalties.

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

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17 CHAPTER 1

18 PHARMACY SERVICES FREEDOM OF CHOICE

19 Section 101. Short title.

20 This act shall be known and may be cited as the Pharmacy  
21 Services Freedom of Choice Act.

22 Section 102. Definitions.

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

26 "Licensed pharmacist." An individual duly licensed by the  
27 State Board of Pharmacy to engage in the practice of pharmacy.

28 "Medical practitioner." A physician, dentist, veterinarian  
29 or other individual duly authorized and licensed by law to  
30 prescribe drugs.

1 "Person." An individual, partnership, corporation or  
2 association or any other legal entity.

3 "Prescription." A written or oral order, issued by a duly  
4 licensed medical practitioner in the course of that  
5 practitioner's professional practice, for a controlled substance  
6 or other drug, device or medication which is dispensed for use  
7 by a consumer.

8 "Prescription drug." A drug supplied pursuant to a  
9 prescription.

10 "Prescription drug benefit program." A program through which  
11 a person enrolled in the program may obtain pharmacy services,  
12 including prescription drugs, through payment by a third-party  
13 entity.

14 "Provider contract." A contract or agreement providing  
15 pharmacy services to a beneficiary, with payment made by a  
16 third-party entity.

17 Section 103. Prohibited policy provisions.

18 No health insurance policy or employee benefit plan which is  
19 executed, delivered, issued or otherwise contracted for in this  
20 Commonwealth shall:

21 (1) Deny a licensed pharmacy or licensed pharmacist the  
22 right to participate as a contracting provider for the policy  
23 or plan upon the same terms and conditions as are offered to  
24 any other pharmacy provider under the policy or plan.

25 (2) Prevent a person who is a party to or beneficiary of  
26 any health insurance policy or employee benefit plan from  
27 selecting a licensed pharmacy of that person's choice to  
28 furnish the pharmacy services offered under the policy or  
29 plan, provided that the pharmacy elects to participate as a  
30 provider under the terms and conditions of the policy or

1 plan.

2 (3) Permit or mandate a difference in the copayment fee  
3 charged to a person who is a party to or beneficiary of a  
4 health insurance policy or employee benefit plan, regardless  
5 of the provider selected by the person or party or regardless  
6 of whether the prescription benefits are provided through  
7 direct contact with the provider or by utilization of a mail-  
8 order service.

9 (4) Provide differences in coverage or impose different  
10 conditions upon a person who is a party to or beneficiary of  
11 a policy or plan based upon the provider utilized or whether  
12 a mail-order service is utilized.

13 Section 104. Unlawful acts.

14 After the effective date of this act, it shall be unlawful  
15 for a health insurance policy or employee benefit plan providing  
16 pharmacy services, including drugs:

17 (1) To require the utilization of a specific licensed  
18 pharmacy, whether located within or outside of this  
19 Commonwealth.

20 (2) To deny a beneficiary or employee the right to  
21 obtain the pharmacy services from a licensed pharmacy willing  
22 to provide the services under the terms and conditions of the  
23 insurance policy or employee benefit plan.

24 Section 105. Provisions in conflict with chapter.

25 (a) Contrary provisions void.--Any provision in a health  
26 insurance policy or employee benefit plan which is executed,  
27 delivered, renewed or otherwise contracted for in this  
28 Commonwealth that is contrary to any provision of this chapter  
29 shall, to the extent of such conflict, be void.

30 (b) Unlawful act.--It shall be unlawful for an insurer or a

1 person to provide any health insurance policy or employee  
2 benefit plan providing for pharmacy services that does not  
3 conform to this chapter.

4 Section 106. Restriction on sale of insurance policies.

5 The Insurance Commissioner may not approve for sale a health  
6 insurance policy or employee benefit plan providing for pharmacy  
7 services which does not conform to this chapter.

8 Section 107. Penalties.

9 A person or entity who violates a provision of this chapter  
10 commits a misdemeanor and shall, upon conviction, be sentenced  
11 to pay a fine of not more than \$5,000 or to imprisonment for not  
12 more than one year, or both. For each subsequent conviction, the  
13 violator shall be sentenced to pay a fine of not more than  
14 \$15,000 or to imprisonment for not more than three years, or  
15 both.

## 16 CHAPTER 2

### 17 PRESCRIPTION DRUGS AND PHARMACEUTICAL SERVICES

18 Section 201. Definitions.

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

22 "Benefit." A benefit for either prescription drugs or  
23 pharmaceutical services, or both, provided by a health benefit  
24 plan or an insurer.

25 "Drug" or "prescription drug." A substance subject to the  
26 Federal Food, Drug, and Cosmetic Act (52 Stat. 1040, 21 U.S.C. §  
27 301 et seq.).

28 "Health benefit plan." An accident and health insurance  
29 policy or certificate; a nonprofit service corporation contract;  
30 a health maintenance organization subscriber contract; a plan

1 provided by a multiple employer welfare arrangement; coverage  
2 provided by an employer, or by any waiver of or other exception  
3 to the act provided under Federal law or regulation. The term  
4 does not include accident only insurance, credit insurance or  
5 disability income insurance.

6 "Insurer." An entity that provides or offers a health  
7 benefit plan.

8 "Pharmacy." A pharmacy that redeems benefits under a health  
9 benefit plan, insurer, or third-party administrator through a  
10 pharmacy provider contract or otherwise.

11 "Pharmacy provider contract." A contract or agreement  
12 between a pharmacy and a health benefit plan, an insurer, or a  
13 third-party administrator under which the pharmacy agrees to  
14 redeem prescription drugs and pharmaceutical services benefits  
15 provided by a health benefit plan or insurer to the subscribers  
16 or beneficiaries of the plan or health insurance certificate.

17 "Third-party administrator." A person who directly or  
18 indirectly solicits or effects coverage of, underwrites,  
19 collects charges or premiums, or adjusts or settles claims in  
20 connection with a health benefit plan.

21 Section 202. Applicability.

22 This act applies only to health benefit plans that provide  
23 benefits for prescription drugs and pharmaceutical services.

24 Section 203. Purpose.

25 The purposes of this chapter are as follows:

26 (1) To promote competition among and continued  
27 availability of retail pharmacies that redeem benefits for  
28 prescription drugs and pharmaceutical services provided to  
29 consumers by a health benefit plan or insurance certificate.

30 (2) To prohibit anticompetitive restrictions in pharmacy

1 provider contracts between a pharmacy and a health benefit  
2 plan, insurer, or third-party administrator.

3 (3) To enable a pharmacy to establish without  
4 restriction its prices for both prescription drugs and  
5 pharmaceutical services, as well as to control its hours of  
6 operation.

7 (4) To further ensure that consumers may redeem  
8 prescription drugs and pharmaceutical services benefits  
9 allowed by a health benefit plan or an insurer at the  
10 pharmacy of the beneficiary's choice.

11 (5) To continue to enable a health benefit plan,  
12 insurer, or third-party administrator to establish  
13 prescription drug and pharmaceutical services benefits it  
14 provides to its beneficiaries or insureds, so long as in so  
15 doing it does not interfere with the right of the pharmacy to  
16 establish its own price or charge for the drug or service.

17 Section 204. Restrictions.

18 Notwithstanding Chapter 1, a health benefit plan, insurer,  
19 third-party administrator, or other entity may not, directly or  
20 indirectly, restrict or prohibit a pharmacy that is not a party  
21 to a pharmacy provider contract from establishing its charge or  
22 price for prescription drugs and pharmaceutical services, or  
23 both, or its hours of operation.

24 Section 205. Pharmacy choice.

25 Subject to the provisions of this chapter, a benefit for  
26 prescription drugs or pharmaceutical services or both may be  
27 redeemed by the beneficiary at any pharmacy of the beneficiary's  
28 choice. The health benefit plan, insurer, third-party  
29 administrator, or other person or entity providing benefits  
30 shall redeem benefits for prescription drugs or pharmaceutical

1 services provided by a pharmacy that is not a party to a  
2 pharmacy provider contract at the same rate and in the same  
3 manner as it redeems the benefits for the drugs or services  
4 provided by a pharmacy under a pharmacy provider contract.

5 Section 206. Beneficiary's choice of pharmacy.

6 A health benefit plan, insurer, third-party administrator, or  
7 other person or entity providing benefits may not, directly or  
8 indirectly, restrict or financially coerce the beneficiary's  
9 choice of pharmacy.

10 Section 207. Pricing.

11 Notwithstanding Chapter 1 if the charge or price established  
12 by the pharmacy for a prescription drug or pharmaceutical  
13 service, or both, is greater than the benefit allowed by the  
14 health benefit plan or insurer for the drug or service, then the  
15 beneficiary is responsible for paying the pharmacy the  
16 difference between the benefit and the charge or price of the  
17 pharmacy for the prescription drug or pharmaceutical service, or  
18 both. Prior to filling the prescription, if the beneficiary  
19 requests the information and the pharmacist has the information,  
20 the pharmacist shall inform the beneficiary what the price  
21 difference will be.

22 Section 208. Additional charges.

23 A health benefit plan, insurer or third-party administrator  
24 shall not restrict or prohibit, directly or indirectly, a  
25 pharmacy that is not a party to a pharmacy provider contract  
26 from charging the beneficiary for services rendered by the  
27 pharmacy that are in addition to charges for the drug, for  
28 dispensing the drug, or for patient counseling.

29 Section 209. Notification.

30 The health benefit plan or the insurer shall inform all



1 beneficiaries under the plan that benefits may be redeemed at  
2 any pharmacy which the beneficiary chooses. This information  
3 shall be communicated through reasonable means on a timely basis  
4 and at regular intervals. The health benefit plan, insurer or  
5 third party administrator may not express an opinion or judgment  
6 as to what a pharmacy's charge or price should be or what a  
7 beneficiary's copayment difference should be. This information  
8 shall also be included in the written summary or description of  
9 the health benefit plan or insurance, as well as other written  
10 communications furnished to beneficiaries where benefits are  
11 mentioned. Nothing in this section shall prevent a health  
12 benefit plan or insurer from notifying its enrollees or  
13 participants of which pharmacies have agreed to fill  
14 prescriptions without any additional charges.

15 Section 210. Advertisement.

16 A pharmacy eligible to redeem benefits under a health benefit  
17 plan may announce and advertise that eligibility in a  
18 commercially reasonable manner.

19 Section 211. Penalties.

20 The penalties shall include the following:

21 (1) The Insurance Commissioner shall not approve any  
22 health benefit plan or policy providing prescription drugs or  
23 pharmaceutical services benefits that does not conform to the  
24 provisions of this chapter.

25 (2) Any provision of a health benefit plan that is  
26 executed, delivered, or renewed or otherwise contracted for  
27 in this Commonwealth that is in conflict with any provision  
28 of this chapter shall be void, to the extent of the conflict.

29 (3) Any provision of a pharmacy provider contract  
30 between a health benefit plan, or insurer, or third-party

1 administrator, or other person subject to the provisions of  
2 this chapter and a pharmacy that is in conflict with this  
3 chapter is void to the extent of the conflict.

4 (4) The Insurance Commissioner shall investigate and  
5 sanction any person, health benefit plan, insurer, third-  
6 party administrator, or other person that violates the  
7 provisions of this chapter.

8 (5) A health benefit plan or insurer, or third-party  
9 administrator, or other person that violates this chapter  
10 shall be subject to civil penalties, restitution and summary  
11 suspension of license or certificate: provided, monetary  
12 civil penalties are directed by the commissioner, for the  
13 purposes of this chapter, these penalties shall not be less  
14 than \$1,000 per day, nor more than \$10,000 per day.

15 (6) If the commissioner has reason to believe that a  
16 health benefit plan, insurer, third-party administrator, or  
17 other person or entity has failed to comply with this  
18 chapter, the commissioner shall issue and serve upon the  
19 person or entity a statement of the charges in that respect  
20 and a notice of hearing to be held at the time and place  
21 fixed in the notice, which shall not be less than ten days  
22 after the date of service of the notice. If, after hearing,  
23 the commissioner finds that the person or entity is in  
24 violation of this chapter, the commissioner shall reduce the  
25 finding to writing and issue and serve upon the person or  
26 entity an order requiring the person or entity to cease and  
27 desist from engaging in the violation. A person or entity  
28 required to cease and desist pursuant to this chapter may  
29 obtain a review of the cease and desist order. A person or  
30 entity found to be in violation of this chapter shall be

1 subject to civil monetary penalties for violations committed  
2 on and after the date the person or entity received the  
3 statement of charges and notice of hearing from the  
4 commissioner.

5 (7) The commissioner shall have the authority granted by  
6 this act to enforce violations of this chapter, including  
7 additional authority provided in this chapter.

8 (8) The Attorney General shall bring such actions as are  
9 necessary to enforce or prevent violations of this chapter,  
10 either through representation of the commissioner or  
11 otherwise.

### 12 CHAPTER 3

#### 13 MISCELLANEOUS PROVISIONS

14 Section 301. Enforcement by Insurance Commissioner.

15 It shall be the duty and responsibility of the Insurance  
16 Commissioner to administer and enforce this act and to  
17 promulgate necessary rules and regulations.

18 Section 302. Repeals.

19 All acts and parts of acts are repealed insofar as they are  
20 inconsistent with this act.

21 Section 303. Applicability.

22 This act shall apply to all health insurance and employee  
23 benefit plans providing pharmacy services benefits, including,  
24 without limitation, prescription drugs, to any resident of this  
25 Commonwealth.

26 Section 304. Effective date.

27 This act shall take effect in 60 days.