

## AMENDMENTS TO HOUSE BILL NO. 941

Sponsor: SENATOR AUMENT

Printer's No. 4049

1 Amend Bill, page 1, lines 3 and 4, by striking out "in public  
2 assistance," in line 3 and all of line 4 and inserting  
3 in public assistance, further providing for medical assistance  
4 pharmacy services and providing for prescription drug pricing  
5 study.

6 Amend Bill, page 1, lines 7 through 14; pages 2 through 5,  
7 lines 1 through 30; page 6, lines 1 through 22; by striking out  
8 all of said lines on said pages and inserting

9 Section 1. Section 449 of the act of June 13, 1967 (P.L.31,  
10 No.21), known as the Human Services Code, is amended to read:

11 Section 449. Medical Assistance Pharmacy Services.--(a) Any  
12 managed care [entity] organization under contract to the  
13 department, or an entity with which the managed care  
14 organization contracts, must contract on an equal basis with any  
15 pharmacy qualified to participate in the Medical Assistance  
16 Program that is willing to comply with the managed care  
17 [entity's] organization's or entity's pharmacy payment rates and  
18 terms and to adhere to quality standards established by the  
19 managed care [entity] organization or entity.

20 (b) The following shall apply:

21 (1) The department may conduct an audit or review of an  
22 entity for the purpose of determining compliance with this  
23 section.

24 (2) In the course of an audit or review under paragraph (1),  
25 an entity shall provide medical assistance-specific information  
26 from a pharmacy contract or agreement to the department.

27 (c) A contract or agreement between an entity and a pharmacy  
28 may not include any of the following:

29 (1) A confidentiality provision that prohibits the  
30 disclosure of information to the department.

31 (2) Any provision that restricts the disclosure of  
32 information to or communication with a managed care organization  
33 or the department.

34 (d) An entity shall maintain records regarding pharmacy  
35 services eligible for payment by the medical assistance program

1 and shall disclose the information to the department upon its  
2 request.

3 (e) Information disclosed or produced by an entity to the  
4 department under this section shall not be subject to public  
5 access under the act of February 14, 2008 (P.L.6, No.3), known  
6 as the "Right-to-Know Law."

7 (f) The following shall apply:

8 (1) If an entity approves a claim for payment under the  
9 medical assistance program, the entity may not retroactively  
10 deny or modify the adjudicated claim unless any of the following  
11 apply:

12 (i) The claim was fraudulent.

13 (ii) The claim was duplicative of a previously paid claim.

14 (iii) The pharmacy did not dispense the pharmacy service on  
15 the claim.

16 (2) Nothing in this subsection shall be construed to  
17 prohibit the recovery of an adjudicated claim that was  
18 determined to be an overpayment or underpayment resulting from  
19 audit, review or investigation by a Federal or State agency or  
20 managed care organization.

21 (g) A managed care organization or pharmacy benefit manager  
22 may not mandate that a medical assistance recipient use a  
23 specific pharmacy unless it is consistent with subsection (a)  
24 and is preapproved by the department.

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  
31 by the same pharmacy benefit manager or pharmacy services  
32 administration organization.

33 (2) Automatically enroll or disenroll a pharmacist or  
34 pharmacy without cause.

35 (3) Charge or retain a differential between what is billed  
36 to a managed care organization as a reimbursement for a pharmacy  
37 service and what is paid to pharmacies by the pharmacy benefit  
38 manager or pharmacy services administration organization for the  
39 pharmacy service.

40 (4) Charge pharmacy transmission fees unless the amount of  
41 the fee is disclosed and applied at the time of claim  
42 adjudication.

43 (i) A managed care organization shall submit its policies  
44 and procedures, and any revisions, for development of network  
45 pharmacy payment methodology to the department. The department  
46 shall review all changes to pharmacy payment methodology prior  
47 to implementation.

48 (j) A managed care organization utilizing a pharmacy benefit  
49 manager shall report to the department information related to  
50 each outpatient drug encounter, including the following:

51 (1) The amount paid to the pharmacy benefit manager by the

1 managed care organization.  
2 (2) The amount paid by the pharmacy benefit manager to the  
3 pharmacy.  
4 (3) Any differences between the amount paid in paragraph (1)  
5 and the amount paid in paragraph (2).  
6 (4) Other information as requested by the department.  
7 (k) A pharmacy shall, upon request, submit the actual  
8 acquisition cost of prescriptions dispensed to medical  
9 assistance beneficiaries.  
10 (m) As used in this section, the following words and phrases  
11 shall have the meanings given to them in this subsection:  
12 "Adjudicated claim" means a claim that has been processed to  
13 payment or denial.  
14 "Entity" means a pharmacy, pharmacy benefit manager, pharmacy  
15 services administration organization or other entity that  
16 manages, processes, or influences the payment for or dispenses  
17 pharmacy services to medical assistance recipients in the  
18 managed care delivery system.  
19 "Pharmacy benefit management" means any of the following:  
20 (1) The procurement of prescription drugs at a negotiated  
21 contracted rate for distribution within this Commonwealth.  
22 (2) The administration or management of prescription drug  
23 benefits provided by a managed care organization.  
24 (3) The administration of pharmacy benefits, including any  
25 of the following:  
26 (i) Operating a mail-service pharmacy.  
27 (ii) Processing claims.  
28 (iii) Managing a retail pharmacy network.  
29 (iv) Paying claims to pharmacies, including retail,  
30 specialty or mail-order pharmacies, for prescription drugs  
31 dispensed to medical assistance recipients receiving services in  
32 the managed care delivery system via a retail or mail-order  
33 pharmacy.  
34 (v) Developing and managing a clinical formulary or  
35 preferred drug list, utilization management or quality assurance  
36 programs.  
37 (vi) Rebate contracting and administration.  
38 (vii) Managing a patient compliance, therapeutic  
39 intervention and generic substitution program.  
40 (viii) Operating a disease management program.  
41 (ix) Setting pharmacy payment pricing and methodologies,  
42 including maximum allowable cost and determining single or  
43 multiple source drugs.  
44 "Pharmacy benefit manager" means a business that performs  
45 pharmacy benefit management. The term does not include a  
46 business that holds a valid license from the Insurance  
47 Department with accident and health authority to issue a health  
48 insurance policy and governed under any of the following:  
49 (1) The act of May 17, 1921 (P.L.682, No.284), known as "The  
50 Insurance Company Law of 1921."  
51 (2) The act of December 29, 1972 (P.L.1701, No.364), known

1 as the "Health Maintenance Organization Act."  
2 (3) 40 Pa.C.S. Ch. 61 (relating to hospital plan  
3 corporations) or 63 (relating to professional health services  
4 plan corporations).

5 "Pharmacy services administration organization" means an  
6 organization comprised of pharmacy members that performs any of  
7 the following:

8 (1) Negotiates or contracts with a managed care organization  
9 or pharmacy benefit manager on behalf of its pharmacy members.

10 (2) Negotiates payment rates, payments or audit terms on  
11 behalf of its pharmacy members.

12 (3) Collects or reconciles payments on behalf of its  
13 pharmacy members.

14 Section 2. The act is amended by adding a section to read:

15 Section 449.1. Prescription Drug Pricing Study.--(a) The  
16 Legislative Budget and Finance Committee shall conduct a study  
17 analyzing prescription drug pricing under the medical assistance  
18 managed care program. The committee shall do all of the  
19 following as it relates to the medical assistance managed care  
20 program only:

21 (1) Provide an overview of the distribution of and payment  
22 for pharmaceuticals in the medical assistance managed care  
23 program.

24 (2) Review the reimbursement practices of pharmacy benefit  
25 managers to pharmacies within this Commonwealth.

26 (3) Review the reimbursement practices of managed care  
27 organizations to pharmacy benefit managers.

28 (4) Investigate and compare the reimbursement rates paid by  
29 pharmacy benefit managers to independent pharmacies and to chain  
30 pharmacies.

31 (5) Study the best practices and laws adopted by other  
32 states to address concerns with pharmacy reimbursement practices  
33 of pharmacy benefit managers.

34 (b) The Legislative Budget and Finance Committee shall  
35 review and utilize data from the most recent twelve-month  
36 period.

37 (c) The department shall provide the following data to the  
38 Legislative Budget and Finance Committee:

39 (1) The amount paid to a pharmacy provider per claim,  
40 including ingredient cost and the amount of any copayment  
41 deducted from the payment.

42 (2) The transmission fees charged by a pharmacy benefit  
43 manager to a pharmacy provider.

44 (3) The amount charged by the pharmacy benefit manager to  
45 the medical assistance managed care organization per claim,  
46 including all administrative fees and processing charges  
47 associated with the claim.

48 (4) Rebates paid by the pharmacy benefit manager to the  
49 managed care organization.

50 (5) Any other data the Legislative Budget and Finance  
51 Committee deems necessary.

1 (d) Pharmacy benefit managers and medical assistance managed  
2 care organizations shall provide the required data under  
3 subsection (c) to the department within 45 days of the effective  
4 date of this section for distribution to the Legislative Budget  
5 and Finance Committee. The providing of data by the pharmacy  
6 benefit managers and medical assistance managed care  
7 organizations to department or by the department to the  
8 Legislative Budget and Finance Committee shall not constitute a  
9 waiver of any applicable privilege or claim of confidentiality.  
10 All data shall be given confidential treatment, shall not be  
11 subject to subpoena by a third party entity and may not be made  
12 public or otherwise shared by the department, the Legislative  
13 Budget and Finance Committee or any other person except to the  
14 extent allowed under this subsection.

15 (e) All data provided under subsection (b) for purposes of  
16 conducting the study shall be in a form that is de-identified of  
17 personal health information.

18 (f) The Legislative Budget and Finance Committee shall  
19 publish only aggregate data in the report. Any information  
20 disclosed or produced by a pharmacy benefit manager or a medical  
21 assistance managed care organization for the purposes of this  
22 study shall be confidential and not be subject to the act of  
23 February 14, 2008 (P.L.6, No.3), known as the "Right-to-Know  
24 Law."

25 (g) The Legislative Budget and Finance Committee shall  
26 submit a report of its findings and recommendations for  
27 legislative action to the General Assembly and the department  
28 within twelve months of the receipt of the data from the  
29 department in subsection (c).

30 (h) As used in this section, the following words and phrases  
31 shall have the meanings given to them in this subsection:

32 "Adjudicated claim" shall have the same meaning as the term  
33 does in section 449.

34 "Entity" shall have the same meaning as the term does in  
35 section 449.

36 "Pharmacy benefit management" shall have the same meaning as  
37 the term does in section 449.

38 "Pharmacy benefit manager" shall have the same meaning as the  
39 term does in section 449.

40 "Pharmacy services administration organization" shall have  
41 the same meaning as the term does in section 449.

42 Section 3. The amendment of section 449 of the act shall  
43 apply to any agreement or contract relating to pharmacy services  
44 to medical assistance recipients in the managed care delivery  
45 system entered into or amended on or after the effective date of  
46 this section.

47 Section 4. This act shall take effect in 60 days.