

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1585 Session of  
2000

INTRODUCED BY MURPHY, MOWERY, SALVATORE, JUBELIRER, BELL, EARLL,  
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RHOADES, TARTAGLIONE, WOZNIAK, STOUT, PUNT, BOSCOLA, MADIGAN  
AND WAUGH, NOVEMBER 6, 2000

REFERRED TO PUBLIC HEALTH AND WELFARE, NOVEMBER 6, 2000

AN ACT

1 Amending the act of July 8, 1986 (P.L.408, No.89), entitled, as  
2 reenacted and amended, "An act providing for the creation of  
3 the Health Care Cost Containment Council, for its powers and  
4 duties, for health care cost containment through the  
5 collection and dissemination of data, for public  
6 accountability of health care costs and for health care for  
7 the indigent; and making an appropriation," providing for  
8 pharmaceutical advertising and promotional expense disclosure  
9 and cost containment.

10 The General Assembly finds and declares as follows:

11 (1) More than almost all other consumer purchases, the  
12 ability to purchase medications has a direct, discernible  
13 impact on the health and life of this Commonwealth's  
14 citizens.

15 (2) A substantial and significant portion of the  
16 prescription drug price and cost to the consumer and the  
17 Commonwealth is represented by advertising, particularly  
18 direct-to-consumer advertising through mass media, and  
19 advertising through the education of the personnel of managed  
20 care plans, pharmaceutical benefits management companies,

1 hospitals and clinics and health care professionals by means  
2 of salespersons' detailing, seminars and conferences, and  
3 indirect advertising and promotion to health care  
4 professionals and their staffs and the personnel of managed  
5 care plans, and pharmaceutical benefits management companies,  
6 hospitals and clinics through entertainment, meals, travel,  
7 trips, promotional items, free samples and free supplies, all  
8 of which also include the salaries of drug representatives  
9 and salespersons.

10 (3) There is a marked increase in spending by  
11 pharmaceutical companies for direct-to-consumer advertising  
12 since the relaxation of Federal regulations in 1997.

13 (4) Researchers have indicated that assumptions of the  
14 amount of advertising are based on extrapolation from data in  
15 the public domain since they were unable to obtain data  
16 directly from the pharmaceutical companies.

17 (5) Pharmaceutical companies claim that advertising  
18 dollars are well spent in that they facilitate dialogue  
19 between patients and doctors about diseases and conditions  
20 that are widely undertreated, thereby leading to diagnoses  
21 and prescriptions that save lives or even greater costs  
22 resulting from delays in treatment, while consumer groups  
23 claim that advertising may result in consumers making  
24 inappropriate demands for newer, costlier medicines, when  
25 less expensive drugs may be as or more appropriate.

26 (6) Health insurance companies claim that direct-to-  
27 consumer advertising motivates consumers to go to the doctor  
28 to ask for more expensive drugs than necessary or for  
29 unnecessary drugs which, in turn, is responsible in part for  
30 large increases in health insurance premiums.

1           (7) There are no accurate reported figures on what  
2           pharmaceutical companies spend on advertising, educational  
3           and promotional activities engaged in with managed care plans  
4           and pharmaceutical benefits management companies to influence  
5           market share.

6           (8) The Commonwealth is a major purchaser of  
7           prescription medications amounting to over one billion  
8           dollars per year, attributable to increases in prices and  
9           costs with a projected annual increase of 18%.

10          (9) Pharmaceutical companies claim that any action by  
11          the government to deal with those increasing prices and costs  
12          will have a negative impact on their capacity to engage in  
13          vital research and development.

14          (10) The General Assembly needs data that is reliable  
15          and valid, and pharmaceutical companies have not been  
16          responsive to the General Assembly's requests for such data.

17          (11) The General Assembly has determined that it must  
18          require pharmaceutical companies to provide data through the  
19          disclosure of their expenditures for mass media direct-to-  
20          consumer advertising, correspondence to consumers and direct  
21          and indirect advertising through education, entertainment and  
22          promotional giveaways for health care professionals and their  
23          staffs, and for the personnel of managed care plans and  
24          pharmaceutical benefits management companies and hospitals  
25          and clinics.

26          (12) The Health Care Cost Containment Council was  
27          established to contain health care costs and to identify  
28          appropriate utilization practices through the collection and  
29          dissemination of data obtained from appropriate sources.

30          (13) Adding to the duties of the council to collect data

1 and provide reports on prescription drug advertising and  
2 promotional activities which influence health care costs is  
3 consistent with the policy expressed in this act to promote  
4 health care costs containment and to identify appropriate  
5 utilization practices in order to contain costs and to assure  
6 access to quality care through the dissemination of data to  
7 purchasers and consumers of health care and to public  
8 officials who determine health-related programs and policies.

9 (14) The council is best situated to aid the General  
10 Assembly in determining if this Commonwealth's citizens  
11 benefit from the additional prices and costs of prescription  
12 drugs attributable to advertising and promotional activities  
13 through a reduction in inpatient hospital stays, ambulatory  
14 care, invasive procedures and visits to health care  
15 professionals.

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

18 Section 1. The act of July 8, 1986 (P.L.408, No.89), known  
19 as the Health Care Cost Containment Act, reenacted and amended  
20 June 28, 1993 (P.L.146, No.34), is amended by adding a section  
21 to read:

22 Section 11.1. Pharmaceutical advertising and promotional  
23 expense disclosure and cost containment.

24 (a) Cost/benefit analysis.--

25 (1) The council shall conduct a cost/benefit analysis of  
26 advertising and promotional activities associated with the  
27 provision of prescription drugs to this Commonwealth's  
28 citizens by pharmaceutical companies.

29 (2) The council shall utilize a methodology to determine  
30 the impact upon the necessity for inpatient hospital care,

1 major ambulatory services, invasive procedures, numbers of  
2 visits to health care professionals and health insurance  
3 premium rates relative to the costs associated with  
4 advertising and promotional activities directed toward this  
5 Commonwealth's citizens by pharmaceutical companies.

6 (3) At reasonable intervals, as determined by the  
7 council, pharmaceutical companies, which provide prescription  
8 drugs in this Commonwealth, shall provide the council with  
9 information necessary to carry out its duties under this  
10 section.

11 (4) Pharmaceutical companies or their representatives,  
12 who provide prescription drugs in this Commonwealth, shall  
13 disclose in the aggregate all advertising and promotional  
14 costs to the council as follows:

15 (i) For every health care professional who  
16 prescribes prescription drugs and for every managed care  
17 plan, pharmaceutical benefits management company,  
18 hospital and clinic which provides prescription drugs,  
19 the dollar amounts spent on the professional, that  
20 professional's staff and the personnel of the managed  
21 care plan and the pharmaceutical benefits management  
22 company, hospital and clinic, and the dollar amount of  
23 the portion of the pharmaceutical companies' detail  
24 persons' salaries attributable to activities listed  
25 below:

26 (A) Education and educational materials,  
27 regardless of whether provided in the place of  
28 business of the health care professional, the managed  
29 care plan, the pharmaceutical benefits management  
30 company, the hospital or clinic or, in another

1           setting, and regardless of whether the pharmaceutical  
2           company directly or indirectly provides the education  
3           and educational materials.

4           (B) Food and entertainment.

5           (C) Gifts, or anything which is received without  
6           consideration of equal or greater value.

7           (D) Trips.

8           (E) Travel.

9           (F) Free samples.

10          (G) Seminars.

11          (H) Reduced prices on prescription drugs.

12          (I) Income.

13          (5) Pharmaceutical companies which advertise in media to  
14          reach a Pennsylvania audience and pharmaceutical companies  
15          which correspond directly with consumers shall disclose the  
16          aggregate cost of the advertising of prescription drugs in  
17          the media and in correspondence to the consumer. For purposes  
18          of this paragraph, media shall include, but not be limited  
19          to, radio, television, the Internet and daily and weekly  
20          magazines and newspapers, billboards and signs. For purposes  
21          of this paragraph, correspondence shall mean direct mail,  
22          telephone communications and electronic mail directed to  
23          specific individuals or households.

24          (6) Pharmaceutical companies referred to in paragraphs  
25          (4) and (5) shall disclose the aggregate of the portion of  
26          salaries of their drug representatives and salespersons who  
27          have all or part of their employment in activities enumerated  
28          in paragraph (4) or (5), or both.

29          (b) Collection, compilation analysis and comparison.--The  
30          council shall collect and compile data from pharmaceutical

1 companies required to provide information under this act. The  
2 council shall use appropriate measures to analyze and compare  
3 data with data on inpatient hospital stays, ambulatory services,  
4 invasive procedures and visits to health care professionals to  
5 conduct the cost/benefit analysis required under subsection  
6 (A)(1).

7 (c) Dissemination of data and recommendations.--

8 (1) The council shall disseminate data in accordance  
9 with this act and shall, no later than one year from the  
10 effective date of this section, make recommendations to the  
11 General Assembly on the costs associated with advertising and  
12 promotional activities by pharmaceutical companies. Such  
13 recommendations may include, but are not limited to, the  
14 necessity of imposing price controls, the efficacy of bulk  
15 purchasing and the institution of educational programs to  
16 maintain good health with or without prescription drugs.

17 (2) The council shall, within two years of the effective  
18 date of this section, publish a report on the impact of  
19 advertising and promotional activities upon the necessity of  
20 inpatient hospital stays, ambulatory care, invasive  
21 procedures, visits to health care professionals and health  
22 insurance premium rates.

23 Section 2. This act shall take effect in 60 days.