

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 6

Session of
1983

INTRODUCED BY DOMBROWSKI, CAPPABIANCA, BOWSER, BOYES AND MERRY,
JANUARY 24, 1983

AS AMENDED ON THIRD CONSIDERATION, IN SENATE, OCTOBER 26, 1983

AN ACT

1 ~~Amending Title 24 (Education) of the Pennsylvania Consolidated~~ <—
2 ~~Statutes, providing for the transfer of employer~~
3 ~~contributions to certain other public pension systems.~~

4 ESTABLISHING A PROGRAM OF LIMITED PHARMACEUTICAL ASSISTANCE FOR <—
5 THE ELDERLY; GRANTING POWERS TO AND IMPOSING DUTIES ON THE
6 DEPARTMENT OF AGING; ESTABLISHING A PAYMENT SYSTEM; MAKING
7 PROVISIONS FOR FUNDING; PROVIDING FOR REPORTS; AND FIXING
8 PENALTIES FOR VIOLATIONS OF THE PHARMACEUTICAL ASSISTANCE
9 PROGRAM.

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

12 ~~Section 1. Section 8502 of Title 24 of the Pennsylvania~~ <—
13 ~~Consolidated Statutes is amended by adding a subsection to read:~~
14 ~~§ 8502. Administrative duties of board.~~

15 * * *

16 ~~(c) Transfer of employer contributions. The board shall,~~
17 ~~upon receipt of a written request from a public employee~~
18 ~~retirement system of a county of the third class and upon~~
19 ~~receipt of written verification that a member of the fund who~~
20 ~~withdrew contributions upon termination of employment will~~

~~deposit the employee's contributions with the retirement system
of a county of the third class, transfer, within 30 days, to the
retirement system of the county of the third class the full
amount of employer contributions and the accumulated interest on
such contributions credited to the former member's account. This
subsection shall apply only where the transfer of employment
from the public school district to the county was not voluntary
on the part of the employee.~~

~~Section 2. This act shall take effect immediately.~~

SECTION 1. SHORT TITLE.

THIS ACT SHALL BE KNOWN AND MAY BE CITED AS THE
PHARMACEUTICAL ASSISTANCE CONTRACT FOR THE ELDERLY ACT.

SECTION 2. LEGISLATIVE FINDINGS.

FINDING THAT AN INCREASING NUMBER OF THE COMMONWEALTH'S
ELDERLY CITIZENS WHO ARE LIVING ON FIXED INCOMES ARE
EXPERIENCING DIFFICULTIES IN MEETING THE COSTS OF LIFE-
SUSTAINING PRESCRIPTION DRUGS, THE GENERAL ASSEMBLY, IN ITS
RESPONSIBILITIES TO PROVIDE FOR THE HEALTH, WELFARE AND SAFETY
OF ITS RESIDENTS, HEREBY ESTABLISHES A LIMITED STATE
PHARMACEUTICAL ASSISTANCE PROGRAM FOR THE ELDERLY.

SECTION 3. DEFINITIONS.

THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS ACT SHALL
HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
CONTEXT CLEARLY INDICATES OTHERWISE:

"BOARD." THE PHARMACEUTICAL ASSISTANCE REVIEW BOARD.

"DEPARTMENT." THE DEPARTMENT OF AGING.

"ELIGIBLE CLAIMANT." A RESIDENT OF THE COMMONWEALTH 65 YEARS
OF AGE AND OVER, WHOSE ANNUAL INCOME IS LESS THAN THE MAXIMUM
ANNUAL INCOME, AND WHO IS NOT OTHERWISE QUALIFIED FOR PUBLIC
ASSISTANCE UNDER THE ACT OF JUNE 13, 1967 (P.L.31, NO.21), KNOWN

1 AS THE PUBLIC WELFARE CODE.

2 "INCOME." ALL INCOME FROM WHATEVER SOURCE DERIVED, INCLUDING
3 BUT NOT LIMITED TO SALARIES, WAGES, BONUSES, COMMISSIONS, INCOME
4 FROM SELF-EMPLOYMENT, ALIMONY, SUPPORT MONEY, CASH PUBLIC
5 ASSISTANCE AND RELIEF, THE GROSS AMOUNT OF ANY PENSIONS OR
6 ANNUITIES INCLUDING RAILROAD RETIREMENT BENEFITS, ALL BENEFITS
7 RECEIVED UNDER THE FEDERAL SOCIAL SECURITY ACT (EXCEPT MEDICARE
8 BENEFITS), ALL BENEFITS RECEIVED UNDER STATE UNEMPLOYMENT
9 INSURANCE LAWS AND VETERANS' DISABILITY PAYMENTS, ALL INTEREST
10 RECEIVED FROM THE FEDERAL GOVERNMENT OR ANY STATE GOVERNMENT, OR
11 ANY INSTRUMENTALITY OR POLITICAL SUBDIVISION THEREOF, REALIZED
12 CAPITAL GAINS, RENTALS, WORKMEN'S COMPENSATION AND THE GROSS
13 AMOUNT OF LOSS OF TIME INSURANCE BENEFITS, LIFE INSURANCE
14 BENEFITS AND PROCEEDS, EXCEPT THE FIRST \$5,000 OF THE TOTAL OF
15 DEATH BENEFITS PAYMENTS, AND GIFTS OF CASH OR PROPERTY, OTHER
16 THAN TRANSFERS BY GIFT BETWEEN MEMBERS OF A HOUSEHOLD, IN EXCESS
17 OF A TOTAL VALUE OF \$300, BUT SHALL NOT INCLUDE SURPLUS FOOD OR
18 OTHER RELIEF IN KIND SUPPLIED BY A GOVERNMENT AGENCY OR PROPERTY
19 TAX REBATE.

20 "MAXIMUM ANNUAL INCOME." ANNUAL INCOME AS DETERMINED BY THE
21 DEPARTMENT. SUCH AMOUNT SHALL NOT EXCEED \$9,000 IN THE CASE OF
22 SINGLE PERSONS NOR \$12,000 IN THE CASE OF THE COMBINED ANNUAL
23 INCOME OF MARRIED PERSONS.

24 "PHARMACY." A PHARMACY LICENSED BY THE COMMONWEALTH.

25 "PRESCRIPTION DRUG." ALL LEGEND DRUGS, INSULIN, INSULIN
26 SYRINGES AND INSULIN NEEDLES. EXPERIMENTAL DRUGS ARE PROHIBITED.

27 "PRIVATE CONTRACTOR." A PERSON, PARTNERSHIP OR CORPORATE
28 ENTITY WHO DESIGNS AND SUBMITS A PROPOSAL TO PROVIDE
29 PHARMACEUTICAL ASSISTANCE AS ESTABLISHED UNDER THE PROVISIONS OF
30 THIS ACT.

1 "PROGRAM." THE PHARMACEUTICAL ASSISTANCE CONTRACT FOR THE
2 ELDERLY AS ESTABLISHED BY THIS ACT.

3 SECTION 4. RESPONSIBILITIES OF DEPARTMENT OF AGING.

4 (A) DETERMINATION OF ELIGIBILITY.--THE DEPARTMENT SHALL
5 ADOPT REGULATIONS RELATING TO THE DETERMINATION OF ELIGIBILITY
6 OF PROSPECTIVE CLAIMANTS AND PROVIDERS INCLUDING DISPENSING
7 PHYSICIANS AND THE DETERMINATION AND ELIMINATION OF PROGRAM
8 ABUSE. THE DEPARTMENT SHALL HAVE THE POWER TO DECLARE INELIGIBLE
9 ANY CLAIMANT WHO ABUSES OR MISUSES THE ESTABLISHED PRESCRIPTION
10 PLAN. THE DEPARTMENT SHALL HAVE THE POWER TO INVESTIGATE CASES
11 OF SUSPECTED PROVIDER OR RECIPIENT FRAUD.

12 (B) REDUCED ASSISTANCE.--ANY ELIGIBLE CLAIMANT NOT OTHERWISE
13 QUALIFIED FOR PAYMENT OF DRUGS UNDER ANY PUBLIC ASSISTANCE
14 PROGRAM WHOSE PRESCRIPTION DRUG COSTS ARE COVERED IN PART BY ANY
15 OTHER PLAN OF ASSISTANCE OR INSURANCE MAY BE REQUIRED TO RECEIVE
16 REDUCED ASSISTANCE UNDER THE PROVISIONS OF THIS ACT AT THE
17 DISCRETION OF THE DEPARTMENT.

18 (C) REBATES FOR EXPENSES PROHIBITED.--A SYSTEM OF REBATES OR
19 REIMBURSEMENTS TO THE PARTICIPANT FOR PHARMACEUTICAL EXPENSES
20 SHALL BE PROHIBITED.

21 (D) REQUEST FOR PROPOSAL.--THE DEPARTMENT SHALL PREPARE A
22 REQUEST FOR PROPOSAL FOR THE PURPOSE OF PROVIDING PHARMACEUTICAL
23 ASSISTANCE FOR THE ELDERLY WITHIN THIS COMMONWEALTH. THE REQUEST
24 FOR PROPOSAL SHALL REQUIRE PRIVATE CONTRACTORS TO SUBMIT A THREE
25 YEAR PROPOSAL NOT TO EXCEED \$300,000,000. UPON THE ADOPTION OF
26 THE GENERAL FUND BUDGET, THE DEPARTMENT OF REVENUE SHALL
27 TRANSMIT THE APPROPRIATED FUNDS IN THE STATE LOTTERY FUND TO THE
28 STATE TREASURER TO BE DEPOSITED IN THE PHARMACEUTICAL ASSISTANCE
29 CONTRACT FOR THE ELDERLY FUND TO BE CREATED BY THE STATE
30 TREASURER TO FUND THE OPERATIONS OF THE PROGRAM. FUNDS NOT

1 EXPENDED IN THE FISCAL YEAR IN WHICH THEY WERE APPROPRIATED
2 SHALL NOT LAPSE AND BE AVAILABLE FOR USE IN THE NEXT FISCAL
3 YEAR.

4 (E) PROGRAM CRITERIA.--THE PROGRAM SHALL INCLUDE THE
5 FOLLOWING CRITERIA:

6 (1) PARTICIPATING PHARMACIES ARE TO BE PAID WITHIN 21
7 DAYS OF THE CONTRACTING FIRM RECEIVING THE APPROPRIATE
8 SUBSTANTIATION OF THE TRANSACTION. PHARMACIES SHALL BE
9 ENTITLED TO INTEREST FOR PAYMENT NOT MADE WITHIN THE 21-DAY
10 PERIOD AT A RATE APPROVED BY THE PHARMACEUTICAL ASSISTANCE
11 REVIEW BOARD.

12 (2) COLLECTION OF THE COPAYMENT BY PHARMACIES SHALL BE
13 MANDATORY.

14 (3) SENIOR CITIZENS PARTICIPATING IN THE PROGRAM ARE NOT
15 REQUIRED TO MAINTAIN RECORDS OF EACH TRANSACTION.

16 (4) A SYSTEM OF REBATES OR REIMBURSEMENTS TO THE
17 PARTICIPANT FOR PHARMACEUTICAL EXPENSES SHALL BE PROHIBITED.

18 (5) THE SYSTEM ESTABLISHED SHALL INCLUDE A PARTICIPANT
19 COPAYMENT SCHEDULE OF \$4 FOR EACH PRESCRIPTION FOR THE FIRST
20 YEAR OF THE CONTRACT. THE COPAYMENT SHALL INCREASE OR
21 DECREASE ON THE ANNUAL BASIS BY THE AVERAGE PERCENT CHANGE OF
22 INGREDIENT COSTS FOR ALL PRESCRIPTION DRUGS PLUS A
23 DIFFERENTIAL TO RAISE THE COPAYMENT TO THE NEXT HIGHEST 25¢
24 INCREMENT. IN ADDITION, THE DEPARTMENT MAY APPROVE A REQUEST
25 FOR INCREASE OR DECREASE IN THE LEVEL OF COPAYMENT BASED UPON
26 THE FINANCIAL EXPERIENCE AND PROJECTIONS OF THE PROGRAM AND
27 AFTER CONSULTATION WITH THE PHARMACEUTICAL ASSISTANCE REVIEW
28 BOARD. THE DEPARTMENT IS PROHIBITED FROM APPROVING
29 ADJUSTMENTS TO THE COPAYMENT ON MORE THAN A SEMIANNUAL BASIS.

30 (6) THE PROGRAM SHALL CONSIST OF PAYMENTS TO PHARMACIES

1 ON BEHALF OF ELIGIBLE CLAIMANTS FOR THE AVERAGE WHOLESALE
2 COST OF LEGEND DRUGS, INSULIN, INSULIN SYRINGES AND INSULIN
3 NEEDLES WHICH EXCEED THE COPAYMENT AND A DISPENSING FEE OF AT
4 LEAST \$2.50. IN NO CASE SHALL THE COMMONWEALTH BE CHARGED
5 MORE THAN THE PRICE OF THE DRUG AT THE PARTICULAR PHARMACY ON
6 THE DATE OF THE SALE. FOR THE PURPOSE OF THE ACT, THE
7 ELIGIBLE CLAIMANT SHALL BE LIABLE TO PAY THE DIFFERENCE
8 BETWEEN THE BRAND NAME DRUG AND THE GENERICALLY EQUIVALENT
9 DRUG AS APPROVED UNDER THE PROVISIONS OF THE ACT OF NOVEMBER
10 24, 1976 (P.L.1163, NO.259). ONLY THE PHYSICIAN MAY PRESCRIBE
11 A NONGENERIC MEDICATION.

12 (7) PRESCRIPTION BENEFITS FOR ANY SINGLE PRESCRIPTION
13 SHALL BE LIMITED TO A 30-DAY SUPPLY OF THE PRESCRIPTION DRUG
14 OR 100 DOSES, WHICHEVER IS LESS, EXCEPT THAT IN THE CASE OF
15 ACUTE DRUGS THE LIMITATION SHALL BE A 15-DAY SUPPLY.

16 (8) EXPERIMENTAL DRUGS ARE TO BE EXCLUDED FROM THE
17 PROGRAM.

18 (9) A SYSTEM OF MAIL ORDER DELIVERY FOR PRESCRIPTIONS
19 SHALL BE PROHIBITED UNDER THIS PROGRAM.

20 (10) THE PROGRAM MUST BE IN PLACE AND OPERATIONAL WITHIN
21 90 DAYS OF THE EFFECTIVE DATE OF THE CONTRACT.

22 (F) REPORTS BY DEPARTMENT.--THE DEPARTMENT SHALL MAINTAIN
23 MONTHLY STATISTICAL RECORDS ON THE PROGRAM TO EFFECTIVELY
24 DETERMINE THE COST OF THE PROGRAM, LEVEL OF PARTICIPATION AND
25 ANY PATTERNS OF UNUSUAL DRUG USAGE. BASED ON THIS INFORMATION,
26 THE DEPARTMENT SHALL SUBMIT A REPORT EVERY THREE MONTHS TO THE
27 AGING AND YOUTH COMMITTEE IN THE SENATE, THE HEALTH AND WELFARE
28 COMMITTEE IN THE HOUSE AND THE PHARMACEUTICAL ASSISTANCE REVIEW
29 BOARD. THE QUARTERLY REPORT SHALL CONTAIN, BUT IS NOT LIMITED
30 TO, ALL INFORMATION RELATING TO THE NUMBER OF PERSONS SERVED BY

1 THE PROGRAM, THEIR COUNTIES OF RESIDENCE, A BREAKDOWN OF THE
2 NUMBERS AND KINDS OF PHARMACEUTICALS USED, THE COST OF
3 PRESCRIPTIONS AND AN ESTIMATE OF ACTUAL EXPENSES INCURRED BY
4 PHARMACISTS PARTICIPATING IN THE PROGRAM.

5 (G) ADJUSTMENTS TO PROGRAM.--THE DEPARTMENT IS AUTHORIZED TO
6 ENTER INTO DISCUSSIONS WITH THE PRIVATE CONTRACTOR PURSUANT TO
7 SECTION 6(C).

8 SECTION 5. CONTRACT.

9 THE DEPARTMENT IS AUTHORIZED TO ENTER INTO A CONTRACT
10 PROVIDING FOR PRESCRIPTION DRUGS TO ELIGIBLE PERSONS PURSUANT TO
11 THIS ACT. THE DEPARTMENT SHALL SELECT A PROPOSAL THAT INCLUDES,
12 BUT IS NOT LIMITED TO, THE CRITERIA SET FORTH IN SECTION 4.

13 SECTION 6. PHARMACEUTICAL ASSISTANCE REVIEW BOARD.

14 (A) ESTABLISHMENT.--A PHARMACEUTICAL ASSISTANCE REVIEW BOARD
15 SHALL BE ESTABLISHED TO ENSURE THAT THE PROGRAM IS PROVIDING AND
16 CONTINUES TO PROVIDE THE ASSISTANCE INTENDED IN A FISCALLY
17 RESPONSIBLE MANNER WITHOUT EXCESSIVELY HAMPERING THE
18 PHARMACEUTICAL INDUSTRY.

19 (B) COMPOSITION.--THE BOARD SHALL BE COMPRISED OF THE
20 FOLLOWING SEVEN PERSONS:

21 (1) THE SECRETARY OF AGING, WHO SHALL SERVE AS ITS
22 CHAIRMAN.

23 (2) THE SECRETARY OF REVENUE.

24 (3) THE SECRETARY OF HEALTH.

25 (4) FOUR PUBLIC MEMBERS, ONE APPOINTED BY THE PRESIDENT
26 PRO TEMPORE OF THE SENATE, ONE APPOINTED BY THE MINORITY
27 LEADER OF THE SENATE, ONE APPOINTED BY THE SPEAKER OF THE
28 HOUSE OF REPRESENTATIVES AND ONE APPOINTED BY THE MINORITY
29 LEADER OF THE HOUSE OF REPRESENTATIVES. THOSE APPOINTED SHALL
30 INCLUDE TWO SENIOR CITIZENS AND TWO REPRESENTATIVES OF THE

1 PHARMACEUTICAL INDUSTRY, AT LEAST ONE OF WHOM IS A PRACTICING
2 PENNSYLVANIA PHARMACIST.

3 (C) REVIEW.--USING THE QUARTERLY REPORTS SUBMITTED BY THE
4 DEPARTMENT PURSUANT TO SECTION 4(F) AND OTHER APPROPRIATE DATA
5 SOURCES, THE BOARD WILL CONDUCT A QUARTERLY REVIEW. THE BOARD
6 SHALL DEVELOP RECOMMENDATIONS CONCERNING ANY CHANGES IN THE
7 LEVEL OF COPAYMENT OR IN THE LEVEL OF FEES PAID TO PARTICIPATING
8 PHARMACISTS. THE BOARD MAY ALSO RECOMMEND OTHER CHANGES IN THE
9 STRUCTURE OF THE PROGRAM AND DIRECT THE DEPARTMENT TO ENTER INTO
10 DISCUSSIONS WITH THE PRIVATE CONTRACTOR CONCERNING AMENDMENTS TO
11 THE CONTRACT. THE COPAYMENT SCHEDULE SHALL ONLY BE ADJUSTED ON A
12 SEMIANNUAL BASIS.

13 SECTION 7. PENALTIES.

14 (A) CRIMINAL PENALTIES.--ANY PERSON WHO SUBMITS A FALSE OR
15 FRAUDULENT CLAIM UNDER THIS ACT, OR WHO AIDS OR ABETS ANOTHER IN
16 THE SUBMISSION OF A FALSE OR FRAUDULENT CLAIM, OR WHO IS
17 ELIGIBLE UNDER A PRIVATE, STATE OR FEDERAL PROGRAM FOR
18 PRESCRIPTION ASSISTANCE AND WHO CLAIMS OR RECEIVES DUPLICATIVE
19 BENEFITS HEREUNDER OR WHO OTHERWISE VIOLATES ANY PROVISIONS OF
20 THIS ACT, COMMITS A MISDEMEANOR OF THE THIRD DEGREE.

21 (B) SUSPENSION OF LICENSE.--ANY PROVIDER WHO HAS BEEN FOUND
22 GUILTY UNDER THIS ACT SHALL BE SUBJECT TO A SUSPENSION OF HIS
23 LICENSE TO PRACTICE FOR A PERIOD OF ONE YEAR.

24 (C) REPAYMENT OF GAIN.--ANY PROVIDER OR RECIPIENT WHO IS
25 FOUND GUILTY UNDER THIS ACT IS SUBJECT TO REPAY THREE TIMES THE
26 VALUE OF THE MATERIAL GAIN HE RECEIVED.

27 SECTION 8. IMPLEMENTATION OF ACT.

28 IMPLEMENTATION OF THE PROVISIONS OF THIS ACT SHALL BE IN
29 ACCORDANCE WITH THE FOLLOWING TIME-FRAME GUIDELINES:

30 (1) THE DEPARTMENT SHALL PUBLISH ITS REQUEST FOR

1 PROPOSAL IN THE PENNSYLVANIA BULLETIN WITHIN 60 DAYS OF THE
2 EFFECTIVE DATE OF THIS ACT.

3 (2) THE DEADLINE FOR SUBMITTING BIDS ON THE PROPOSAL
4 SHALL BE 60 DAYS FROM THE DATE OF PUBLICATION.

5 (3) THE DEPARTMENT MUST MAKE A SELECTION AND ENTER INTO
6 A CONTRACT WITHIN 30 DAYS OF THE CLOSE OF BIDS.

7 SECTION 9. EFFECTIVE DATE.

8 THIS ACT SHALL TAKE EFFECT IMMEDIATELY.