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THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2947 Session of 1990

INTRODUCED BY TRELLO, DeLUCA, COY, CAPPABIANCA, MELIO, KOSINSKI, MICOZZIE, LaGROTTA, BELARDI, HARPER, OLASZ, RYBAK, VAN HORNE, NAHILL, CORRIGAN, CARLSON, PESCI, JOHNSON, MAIALE, GIGLIOTTI, MIHALICH, LAUGHLIN, E. Z. TAYLOR, MORRIS, JOSEPHS, THOMAS, CIVERA, ADOLPH AND J. TAYLOR, OCTOBER 2, 1990

REFERRED TO COMMITTEE ON YOUTH AND AGING, OCTOBER 2, 1990

AN ACT

Amending the act of November 4, 1983 (P.L.217, No.63), entitled "An act establishing a program of limited pharmaceutical assistance for the elderly; granting powers to and imposing duties on the Department of Aging; establishing a payment system; making provisions for funding; providing for reports; and fixing penalties for violations of the pharmaceutical assistance program," providing for a fixed copayment for a prescription filled with a generic drug.

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

Section 1. Section 4(e) of the act of November 4, 1983 (P.L.217, No.63), known as the Pharmaceutical Assistance Contract for the Elderly Act, amended June 30, 1987 (P.L.169, No.17), is amended to read:

Section 4. Responsibilities of Department of Aging.

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(e) Program criteria.--The program shall include the following criteria:

(1) Participating pharmacies are to be paid within 21

days of the contracting firm receiving the appropriate substantiation of the transaction. Pharmacies shall be entitled to interest for payment not made within the 21-day period at a rate approved by the Pharmaceutical Assistance Review Board.

(2) Collection of the copayment by pharmacies shall be mandatory.

(3) Senior citizens participating in the program are not required to maintain records of each transaction.

(4) A system of rebates or reimbursements to eligible claimants for pharmaceutical expenses shall be prohibited.

(5) The system established shall include a participant copayment schedule of $4 for each prescription for the first year of the contract. The copayment shall increase or decrease on the annual basis by the average percent change of ingredient costs for all prescription drugs plus a differential to raise the copayment to the next highest 25ç increment. In addition, the department may approve a request for increase or decrease in the level of copayment based upon the financial experience and projections of the program and after consultation with the Pharmaceutical Assistance Review Board. The department is prohibited from approving adjustments to the copayment on more than a semiannual basis.

(5.1) Notwithstanding paragraph (5) the copayment for a prescription filled with a generically equivalent drug shall be $2. This amount shall not be subject to the adjustment procedures of this act.

(6) The program shall consist of payments to pharmacies on behalf of eligible claimants for the average wholesale cost of drugs, insulin, insulin syringes and insulin needles

which exceed the copayment plus a dispensing fee of at least $2.50 or the dispensing fee required by the Department of Welfare under its Medical Assistance Program under the act of June 13, 1967 (P.L.31, No.21), known as the Public Welfare Code, whichever is greater.

(6.1) The average wholesale cost shall be based on a list of package sizes to be established by the department. The list shall reflect the average wholesale cost of drugs based on the package size listed in the February 1984 "Yellow Book" distributed by the Health Care Financing Administration for the drugs contained on that list. The Department of Aging shall have the authority to change the package size of drugs on that list and to add drugs and package sizes to that list, with the review and approval of the Pharmaceutical Assistance Review Board. Changes to the list shall take effect upon publication in the Pennsylvania Bulletin. The department shall have the authority to reimburse based upon the package sizes established in this paragraph.

(6.2) In no case shall the Commonwealth be charged more than the price of the drug at the particular pharmacy on the date of the sale.

(6.3) For purposes of this act, the eligible claimant shall be liable to pay a fixed differential whenever a more expensive brand name drug is requested by the claimant when the physician permitted substitution of a less expensive generically equivalent drug approved under the provisions of the act of November 24, 1976 (P.L.1163, No.259), referred to as the Generic Equivalent Drug Law.

(6.4) The differential will be charged regardless of the availability of a less expensive generic equivalent in the

providing pharmacy. In no case will the claimant bear the cost of the differential when the generic equivalent is not available.

(6.5) The department shall establish a pharmacist consultation reimbursement program for a period of not less than six months, following which the department may continue or discontinue the program. This program shall provide an additional $1 supplemental dispensing fee whenever a pharmacy's documented intervention resulted in a physician changing a prescription for a more expensive brand name product to a prescription allowing substitution of a less expensive generically equivalent drug. This supplemental dispensing fee shall provide the only exception to paragraph (6.3).

(7) Prescription benefits for any single prescription shall be limited to a 30-day supply of the prescription drug or 100 units, whichever is less, except that, in the case of diagnosis for acute conditions, the limitation shall be a 15-day supply.

(8) The department may establish a restricted formulary of the drugs which will not be reimbursed by the program. This formulary shall include only experimental drugs and drugs on Drug Efficacy Study Implementation List prepared by the Health Care Finance Administration. A medical exception may be permitted by the department for reimbursement of a drug on the Drug Efficacy Study Implementation List upon declaration of its necessity on the prescription by the treating physician; except that, for DESI drugs for which the FDA has issued a Notice for Opportunity Hearing (NOOH) for the purpose of withdrawing the New Drug Application approved

for that drug, reimbursement coverage shall be discontinued under the provisions of this act.

(9) The department may not enter into a contract with a private contractor for an exclusive mail order system for the delivery of prescription drugs under this program. Only mail order pharmacy services provided by pharmacies which are licensed by the Commonwealth and which have their principal place of business within this Commonwealth may participate as providers under the program. Within a period of six months following the effective date of this amendatory act, the department shall develop and promulgate specific regulations governing the practice of mail order pharmacy and other enrolled providers to include the following minimum standards of practice to ensure the health, safety and welfare of program participants:

(i) The appropriate method or methods by which such pharmacies shall verify the identity of the program recipient and the authenticity of prescriptions received.

(ii) The appropriate method or methods by which such pharmacies shall mail or deliver prescription drugs to program recipients ensuring, to the maximum extent possible, that the intended program recipient is the actual ultimate recipient of any prescription dispensed by such pharmacies.

(iii) The appropriate method or methods by which such pharmacies shall communicate with program participants in emergency situations.

(10) The program must be in place and operational within 90 days of the effective date of the contract.

(11) For-profit third party insurers and not-for-profit

prescription plans shall reimburse the department for any payments made to a providing pharmacy on behalf of a claimant covered by such a third party.

(12) Any health care professional rendering service as a member of a utilization review committee for this program shall not be liable for any civil damages as a result of any acts or omissions in rendering the service as a member of any such committee except any acts or omissions intentionally designed to harm or any grossly negligent acts or omissions which result in harm to the person receiving such service.

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