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THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2733 Session of 1994

INTRODUCED BY BLAUM, LEDERER, GEORGE, VEON, HASAY, TANGRETTI, BELARDI, LAUB, McCALL, TRICH, JAROLIN, TIGUE, ROONEY, BEBKO-JONES, DERMODY, STISH, MUNDY, DeLUCA, PLATTS, J. TAYLOR, SURRA, GORDNER, RICHARDSON, RUDY, BELFANTI, BUNT, BURNS, CESSAR, L. I. COHEN, CORNELL, COY, FAJT, FEE, GIGLIOTTI, GRUITZA, HALUSKA, KASUNIC, KENNEY, LAUGHLIN, LEVDANSKY, LUCYK, McGEEHAN, MELIO, MICOZZIE, PESCI, PISTELLA, ROBERTS, SCRIMENTI, B. SMITH, STABACK, E. Z. TAYLOR, TRELLO, VAN HORNE AND D. R. WRIGHT, MAY 16, 1994

REFERRED TO COMMITTEE ON AGING AND YOUTH, MAY 16, 1994

AN ACT

Amending the act of August 14, 1991 (P.L.342, No.36), entitled "An act providing for the preservation of the State Lottery Fund; further providing for pharmaceutical assistance for the elderly; further providing for transportation assistance to the elderly; providing for pharmaceutical purchasing; conferring powers and duties upon the Department of Aging, the Department of Revenue and the Department of Transportation; imposing penalties; and making repeals," further providing for the maximum annual income of eligible claimants for pharmaceutical assistance, for use of brand name drugs and for rebates.

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

Section 1. The definition of "maximum annual income" in section 302 of the act of August 14, 1991 (P.L.342, No.36), known as the Lottery Fund Preservation Act, is amended to read:

Section 302. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the

context clearly indicates otherwise:

* * *

"Maximum annual income." Annual income as determined by the department[.

(1) Except as provided in paragraph (2), such amount shall not exceed $13,000 in the case of single persons nor $16,200 in the case of the combined annual income of married persons.

(2) If this chapter takes effect before September 1, 1991, the following shall apply:

(i) Before September 1, 1991, such amount shall not exceed $12,000 in the case of single persons nor $15,000 in the case of the combined annual income of married persons.

(ii) After August 31, 1991], such amount [shall] not <u>to</u> exceed [$13,000] <u>$14,000</u> in the case of single persons nor [$16,200] <u>$17,200</u> in the case of the combined annual income of married persons.

* * *

Section 2. Sections 303(h)(9) and (10) and 605(a) of the act, amended or added December 9, 1992 (P.L.792, No.128), are amended to read:

Section 303. Responsibilities of department.

* * *

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

* * *

(9) Notwithstanding any other statute or regulation, if an A-rated generic therapeutically equivalent drug is available for dispensing to a claimant, the provider shall

dispense the A-rated generic therapeutically equivalent drug to the claimant. The department shall not reimburse providers for brand name products except in the following circumstances:

(i) There is no A-rated generic therapeutically equivalent drug available on the market. This subparagraph does not apply to the lack of availability of an A-rated generic therapeutically equivalent drug in the providing pharmacy, unless it can be shown to the department that the provider made reasonable attempts to obtain the A-rated generic therapeutically equivalent drug or that there was an unforeseeable demand and depletion of the supply of the A-rated generic therapeutically equivalent drug. In either case, the department shall reimburse the provider for the average wholesale cost plus a dispensing fee based on the least expensive A-rated generic therapeutically equivalent drug for the brand drug dispensed.

(ii) An A-rated generic therapeutically equivalent drug is deemed by the department, in consultation with a utilization review committee, to have too narrow a therapeutic index for safe and effective dispensing in the community setting. The department shall notify providing pharmacies of A-rated generic therapeutically equivalent drugs that are identified pursuant to this subparagraph on a regular basis.

(iii) The Department of Health has determined that a drug shall not be recognized as an A-rated generic therapeutically equivalent drug for purpose of substitution under section 5(b) of the act of November

24, 1976 (P.L.1163, No.259), referred to as the Generic Equivalent Drug Law.

(iv) At the time of dispensing, the provider has a prescription on which the brand name drug dispensed is billed to the program by the provider at a usual and customary charge which is equal to or less than the least expensive usual and customary charge of any A-rated generic therapeutically equivalent drug reasonably available on the market to the provider.

[(v) At the time of dispensing, the provider has a prescription on which the prescriber has handwritten "brand necessary" or "brand medically necessary" on the prescription.]

(10) If a claimant chooses not to accept the A-rated generic therapeutically equivalent drug required by paragraph (9), the claimant shall be liable for the copayment and 70% of the average wholesale cost of the brand name drug. <u>This paragraph shall not apply if the prescriber can demonstrate in writing on a form provided by the Department of Aging that:</u>

<u>(i) The claimant is in danger of an adverse reaction from use of the generic therapeutically equivalent drug required under paragraph (9).</u>

<u>(ii) Use of the prescribed brand name drug would eliminate the danger of the adverse reaction.</u>

* * *

Section 605. Amount of rebate.

(a) Single-source drugs and innovator multiple-source drugs.--With respect to single-source drugs and innovator multiple-source drugs, each manufacturer shall remit a rebate to

the Commonwealth. Except as otherwise provided in this section, the amount of the rebate to the Commonwealth per calendar quarter with respect to each dosage form and strength of single-source drugs and innovator multiple-source drugs shall be as follows:

(1) For quarters beginning after December 31, 1990, and ending before October 1, 1992, the product of the total number of units of each dosage form and strength reimbursed by the PACE Program and the General Assistance Program in the quarter and the difference between the average manufacturer price and 87.5% of that price, after deducting customary prompt payment discounts, for the quarter.

(2) For quarters beginning after September 30, 1992, the product of the total number of units of each dosage form and strength reimbursed by the PACE Program and the General Assistance Program in the quarter and the difference between the average manufacturer price and [85%] <u>83%</u> of that price, after deducting customary prompt payment discounts, for the quarter.

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Section 3. This act shall apply to calendar year 1995 and each year thereafter.

Section 4. This act shall take effect immediately.