
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1008 Session of
2001

INTRODUCED BY COLEMAN, ADOLPH, ARGALL, BARD, BARRAR, BELFANTI,
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SAINATO, SAMUELSON, SAYLOR, TIGUE, WATERS, WILT, STEELMAN AND
CRUZ, MARCH 15, 2001

REFERRED TO COMMITTEE ON AGING AND OLDER ADULT SERVICES,
MARCH 15, 2001

AN ACT

1 Providing an additional program for pharmaceutical assistance to
2 the elderly; imposing additional powers and duties in the
3 Department of Aging; and making a repeal.

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

18 Section 1. Short title.

19 This act shall be known and may be cited as the
20 Pharmaceutical Assistance Contract for the Elderly Needs
21 Enhancement Tier Act.

22 Section 2. Definitions.

23 The following words and phrases when used in this act shall
24 have the meanings given to them in this section unless the
25 context clearly indicates otherwise:

26 "A-rated generic therapeutically equivalent drug." A drug
27 product that the Commissioner of Food and Drugs of the United
28 States Food and Drug Administration has approved as safe and
29 effective and has determined to be therapeutically equivalent,
30 as listed in "The Approved Drug Products with Therapeutic

1 Equivalence Evaluations" (Food and Drug Administration "Orange
2 Book"), with a specific "A" code designation only.

3 "Average wholesale cost." The cost of a dispensed drug based
4 upon the price published in a national drug pricing system in
5 current use by the Department of Aging as the average wholesale
6 price of a prescription drug in the most common package size.

7 "Average wholesale price." Average wholesale cost.

8 "Board." The Pharmaceutical Assistance Review Board as
9 established in section 520 of the act of August 26, 1971
10 (P.L.351, No.91), known as the State Lottery Law.

11 "Department." The Department of Aging of the Commonwealth.

12 "Eligible claimant." A resident of this Commonwealth for no
13 less than 90 days, who is 65 years of age and over, whose annual
14 income is less than the maximum annual income and who is not
15 otherwise qualified for public assistance under the act of June
16 13, 1967 (P.L.31, No.21), known as the Public Welfare Code.

17 "FDA." The United States Food and Drug Administration of the
18 Public Health Service of the Department of Health and Human
19 Services.

20 "HCFA." The Health Care Financing Administration of the
21 United States.

22 "Income." All income from whatever source derived,
23 including, but not limited to, salaries, wages, bonuses,
24 commissions, income from self-employment, alimony, support
25 money, cash public assistance and relief, the gross amount of
26 any pensions or annuities, including railroad retirement
27 benefits, all benefits received under the Social Security Act
28 (49 Stat. 620, 42 U.S.C. § 301 et. seq.) (except Medicare
29 benefits), all benefits received under State unemployment
30 insurance laws and veterans' disability payments, all interest

1 received from the Federal Government or any state government or
2 any instrumentality or political subdivision thereof, realized
3 capital gains, rentals, workmen's compensation and the gross
4 amount of loss of time insurance benefits, life insurance
5 benefits and proceeds, except the first \$5,000 of the total of
6 death benefits payments, and gifts of cash or property, other
7 than transfers by gift between members of a household, in excess
8 of a total value of \$300, but shall not include surplus food or
9 other relief in kind supplied by a government agency or property
10 tax rebate.

11 "PACENET." The Pharmaceutical Assistance Contract for the
12 Elderly Needs Enhancement Tier provided for in this act.

13 "Pharmacy." A pharmacy licensed by the Commonwealth.

14 "Prescription drug." All drugs requiring a prescription in
15 this Commonwealth, insulin, insulin syringes and insulin
16 needles. Experimental drugs or drugs prescribed for wrinkle
17 removal or hair growth are prohibited.

18 "Private contractor." A person, partnership or corporate
19 entity who enters into a contract with the Commonwealth to
20 provide services under the provisions of this act.

21 "Program." The Pharmaceutical Assistance Contract for the
22 Elderly Needs Enhancement Tier (PACENET) as established by this
23 act.

24 "Provider." A pharmacy or dispensing physician enrolled as a
25 provider in the program.

26 "State Lottery Law." The provisions of the act of August 26,
27 1971 (P.L.351, No.91), known as the State Lottery Law.

28 Section 3. The Pharmaceutical Assistance Contract for the
29 Elderly Needs Enhancement Tier.

30 (a) Establishment.--There is hereby established within the

1 department a program to be known as the Pharmaceutical
2 Assistance Contract for the Elderly Needs Enhancement Tier
3 (PACENET).

4 (b) PACENET eligibility.--A claimant with an annual income
5 of not less than \$14,000 and not more than \$22,000 in the case
6 of a single person and of not less than \$17,200 and not more
7 than \$30,000 in the case of the combined income of persons
8 married to each other shall be eligible for enhanced
9 pharmaceutical assistance under this section. A person may, in
10 reporting income to the department, round the amount of each
11 source of income and the income total to the nearest whole
12 dollar, whereby any amount which is less than 50¢ is eliminated.

13 (c) Deductible.--Upon enrollment in PACENET, eligible
14 claimants in the income ranges set forth in subsection (b) shall
15 be required to meet an annual deductible in unreimbursed
16 prescription drug expenses of \$40 per person per calendar month.
17 To qualify for the deductible set forth in this subsection, the
18 prescription drug must be purchased for the use of the eligible
19 claimant from a provider as defined in this act. The department,
20 after consultation with the board, may approve an adjustment in
21 the deductible on an annual basis.

22 (d) Copayment.--For eligible claimants under this section,
23 the copayment schedule, which may be adjusted by the department
24 on an annual basis after consultation with the board, shall be:

25 (i) eight dollars for noninnovator multiple source
26 drugs as defined in section 702 of the State Lottery Law;
27 or

28 (ii) fifteen dollars for single-source drugs and
29 innovator multiple-source drugs as defined in section 702
30 of the State Lottery Law.

1 Section 4. Determination of eligibility.

2 The department shall adopt regulations relating to the
3 determination of eligibility of prospective claimants and
4 providers, including dispensing physicians, and the
5 determination and elimination of program abuse. To this end, the
6 department shall establish a compliance unit staffed
7 sufficiently to fulfill this responsibility. The department
8 shall have the power to declare ineligible any claimant or
9 provider 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 Section 5. Physician and pharmacy participation.

13 Any physician, pharmacist, pharmacy or corporation owned in
14 whole or in part by a physician or pharmacist enrolled as a
15 provider in the program or who has prescribed medication for a
16 claimant in the program who is precluded or excluded for cause
17 from the Department of Public Welfare's Medical Assistance
18 Program shall be precluded or excluded from participation in the
19 program. No physician precluded or excluded from the Department
20 of Public Welfare's Medical Assistance Program shall have claims
21 resulting from prescriptions paid for by the program.

22 Section 6. Drug utilization review system.

23 The department shall ensure that a state-of-the-art
24 therapeutic drug utilization review system is established to
25 monitor and correct misutilization of drug therapies.

26 Section 7. Reduced assistance.

27 Any eligible claimant whose prescription drug costs are
28 covered in part by any other plan of assistance or insurance may
29 be required to receive reduced assistance under the provisions
30 of this act.

1 Section 8. Rebates for expenses prohibited.

2 A system of rebates or reimbursements to the claimant for
3 prescription drugs shall be prohibited.

4 Section 9. Request for proposal.

5 (a) General rule.--The department shall prepare a request
6 for proposal for the purpose of providing pharmaceutical
7 assistance for the elderly within this Commonwealth under this
8 act. Upon the adoption of the General Fund budget, the
9 Department of Revenue shall be authorized to transmit the
10 appropriated funds in the State Lottery Fund to the State
11 Treasurer to be deposited in the Pharmaceutical Assistance
12 Contract for the Elderly Fund. This fund shall consist of
13 appropriations and interest and shall be created by the State
14 Treasurer to fund the operations of the program by the
15 department and the private contractor. Funds not expended in the
16 fiscal year in which they were appropriated shall not lapse and
17 shall be available for use in the next fiscal year.

18 (b) Additional requests for proposals.--To provide for the
19 continued operation of the program, the department shall
20 prepare, as needed, requests for proposals, in addition to that
21 set forth in subsection (a), for the purpose of providing
22 pharmaceutical assistance for the elderly within this
23 Commonwealth. A request for proposal shall require potential
24 private contractors to submit a proposal for a period of time
25 and with monetary limitations as determined by the department.
26 Upon the enactment of an appropriation from the State Lottery
27 Fund, the Department of Revenue shall be authorized to transmit
28 the appropriated amount to the State Treasurer to be deposited
29 in the Pharmaceutical Assistance Contract for the Elderly Fund.
30 Funds not expended in the fiscal year in which they were

1 appropriated shall not lapse and shall be available for use in
2 the next fiscal year.

3 Section 10. Program generally.

4 The program shall include the following:

5 (1) Participating pharmacies shall be paid within 21
6 days of the contracting firm receiving the appropriate
7 substantiation of the transaction. Pharmacies shall be
8 entitled to interest for payment not made within the 21-day
9 period at a rate approved by the board.

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

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

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

16 (5) PACENET shall include a participant copayment
17 schedule for each prescription. The copayment may increase or
18 decrease on an annual basis by the average percent change of
19 ingredient costs for all prescription drugs, plus a
20 differential to raise the copayment to the next highest 25¢
21 increment. In addition, the department may approve a request
22 for increase or decrease in the level of copayment based upon
23 the financial experience and projections of PACENET and after
24 consultation with the board. The department is prohibited
25 from approving adjustments to the copayment on more than an
26 annual basis.

27 (6) The program shall consist of payments to pharmacies
28 on behalf of eligible claimants for 90% of the average
29 wholesale costs of prescription drugs which exceed the
30 copayment, plus a dispensing fee of at least \$3.50 or the

1 dispensing fee established by the department by regulation,
2 whichever is greater.

3 (7) In no case shall the Commonwealth or any person
4 enrolled in the program be charged more than the price of the
5 drug at the particular pharmacy on the date of the sale.

6 Section 11. Generic drugs.

7 (a) In general.--Notwithstanding any other statute or
8 regulation, if an A-rated generic therapeutically equivalent
9 drug is available for dispensing to a claimant, the provider
10 shall dispense the A-rated generic therapeutically equivalent
11 drug to the claimant. The department shall not reimburse
12 providers for brand name products except in the following
13 circumstances:

14 (1) There is no A-rated generic therapeutically
15 equivalent drug available on the market. This paragraph does
16 not apply to the lack of availability of an A-rated generic
17 therapeutically equivalent drug in the providing pharmacy
18 unless it can be shown to the department that the provider
19 made reasonable attempts to obtain the A-rated generic
20 therapeutically equivalent drug or that there was an
21 unforeseeable demand and depletion of the supply of the A-
22 rated generic therapeutically equivalent drug. In either
23 case, the department shall reimburse the provider for 90% of
24 the average wholesale cost plus a dispensing fee based on the
25 least expensive A-rated generic therapeutically equivalent
26 drug for the brand drug dispensed.

27 (2) An A-rated generic therapeutically equivalent drug
28 is deemed by the department, in consultation with a
29 utilization review committee, to have too narrow a
30 therapeutic index for safe and effective dispensing in the

1 community setting. The department shall notify providing
2 pharmacies of A-rated generic therapeutically equivalent
3 drugs that are identified pursuant to this paragraph on a
4 regular basis.

5 (3) The Department of Health has determined that a drug
6 shall not be recognized as an A-rated generic therapeutically
7 equivalent drug for purpose of substitution under section
8 5(b) of the act of November 24, 1976 (P.L.1163, No.259),
9 referred to as the Generic Equivalent Drug Law.

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

17 (b) Generic not accepted.--If a claimant chooses not to
18 accept the A-rated generic therapeutically equivalent drug
19 required by subsection (a), the claimant shall be liable for the
20 copayment and 70% of the average wholesale cost of the brand
21 name drug.

22 (c) Generic drugs not deemed incorrect substitution.--The
23 dispensing of an A-rated generic therapeutically equivalent drug
24 in accordance with this chapter shall not be deemed incorrect
25 substitution under section 6(a) of the Generic Equivalent Drug
26 Law.

27 (d) Medical exception.--A medical exception process shall be
28 established by the department, which shall be published as a
29 notice in the Pennsylvania Bulletin and distributed to providers
30 and recipients in the program.

1 Section 12. Supply.

2 Prescription benefits for any single prescription shall be
3 limited to a 30-day supply of the prescription drug or 100
4 units, whichever is less, except that, in the case of diagnosis
5 for acute conditions, the limitation shall be a 15-day supply.
6 This limitation shall not apply to topical ointments or gels
7 that are not available in containers which meet the size and
8 supply restrictions set forth in this section.

9 Section 13. Restricted formulary.

10 The department may establish a restricted formulary of the
11 drugs which will not be reimbursed by the program. This
12 formulary shall include only experimental drugs and drugs on the
13 Drug Efficacy Study Implementation List prepared by the Health
14 Care Finance Administration. A medical exception may be
15 permitted by the department for reimbursement of a drug on the
16 Drug Efficacy Study Implementation List upon declaration of its
17 necessity on the prescription by the treating physician, except
18 that, for DESI drugs for which the FDA has issued a Notice for
19 Opportunity Hearing (NOOH) for the purpose of withdrawing the
20 New Drug Application approved for that drug, reimbursement
21 coverage shall be discontinued under the provisions of this act.

22 Section 14. Mail order system.

23 The department may not enter into a contract with a private
24 contractor for an exclusive mail-order system for the delivery
25 of prescription drugs under this program. Only mail-order
26 pharmacy services provided by pharmacies which are licensed by
27 the Commonwealth and which have their principal place of
28 business within this Commonwealth may participate as providers
29 under the program. The department shall develop and promulgate
30 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:

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

(2) 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.

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

Section 15. Indication of price.

The retail price of the prescription shall be indicated on the label of the prescription container or furnished by separate receipt.

Section 16. Reimbursement.

For-profit third-party insurers and not-for-profit prescription plans shall be responsible for any payments made to a providing pharmacy on behalf of a claimant covered by such a third party.

Section 17. Nonliability.

(a) Persons rendering service.--Any person 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

1 which result in harm to the person receiving such service.

2 (b) Officer and employees of department.--Any officer or
3 employee of the department rendering service as a member of a
4 utilization review committee for this program shall not be
5 liable for any civil damages as a result of any acts or
6 omissions in rendering the service as a member of any such
7 committee or as a result of any decision or action in connection
8 with the program except any acts or omissions intentionally
9 designed to harm or any grossly negligent acts or omissions
10 which result in harm to the person receiving such service.

11 Section 18. Income verification.

12 (a) Procedure.--The department shall annually verify the
13 income of eligible claimants. The department shall verify the
14 income of eligible claimants by requiring income documentation
15 from the claimants. An application for benefits under this
16 chapter shall constitute a waiver to the department of all
17 relevant confidentiality requirements relating to the claimant's
18 Pennsylvania State income tax information in the possession of
19 the Department of Revenue. The Department of Revenue shall
20 provide the department with the necessary income information
21 shown on the claimant's Pennsylvania State income tax return
22 solely for income verification purposes.

23 (b) Information confidential.--It shall be unlawful for any
24 officer, agent or employee of the department to divulge or make
25 known in any manner whatsoever any information gained through
26 access to the Department of Revenue information except for
27 official income verification purposes under this act.

28 (c) Penalty.--A person who violates this act commits a
29 misdemeanor and shall, upon conviction, be sentenced to pay a
30 fine of not more than \$1,000 or to imprisonment for not more

1 than one year, or both, together with the cost of prosecution,
2 and, if the offender is an officer or employee of the
3 Commonwealth, he shall be dismissed from office or discharged
4 from employment.

5 (d) Coordination with Department of Public Welfare.--To the
6 extent possible, the department and the Department of Public
7 Welfare shall coordinate efforts to facilitate the application
8 and enrollment of eligible older people in the Medicaid Healthy
9 Horizons Program by processing these applications at senior
10 citizens centers and other appropriate facilities providing
11 services to the elderly.

12 Section 19. Contract.

13 The department is authorized to enter into a contract
14 providing for prescription drugs to eligible persons pursuant to
15 this act. The department shall select a proposal that includes,
16 but is not limited to, the criteria set forth in this act.

17 Section 20. Penalties.

18 (a) Prohibited acts.--It shall be unlawful for any person to
19 submit a false or fraudulent claim or application under this
20 act, including, but not limited to:

21 (1) aiding or abetting another in the submission of a
22 false or fraudulent claim or application;

23 (2) receiving benefits or reimbursement under a private,
24 Federal or State program for prescription assistance and
25 claiming or receiving duplicative benefits hereunder;

26 (3) soliciting, receiving, offering or paying any
27 kickback, bribe or rebate, in cash or in kind, from or to any
28 person in connection with the furnishing of services under
29 this act;

30 (4) engaging in a pattern of submitting claims that

1 repeatedly uses incorrect National Drug Code numbers for the
2 purpose of obtaining wrongful enhanced reimbursement; or

3 (5) otherwise violating any provision of this act.

4 (b) Civil penalty.--In addition to any appropriate criminal
5 penalty for prohibited acts under this act whether or not that
6 act constitutes a crime under 18 Pa.C.S. (relating to crimes and
7 offenses), a provider who violates this section may be liable
8 for a civil penalty in an amount not less than \$500 and not more
9 than \$10,000 for each violation of this act which shall be
10 collected by the department. Each violation constitutes a
11 separate offense. If the department collects three or more civil
12 penalties against the same provider, the provider shall be
13 ineligible to participate in PACENET for a period of one year.
14 If more than three civil penalties are collected from any
15 provider, the department may determine that the provider is
16 permanently ineligible to participate in PACENET.

17 (c) Suspension of license.--The license of any provider who
18 has been found guilty under this act shall be suspended for a
19 period of one year. The license of any provider who has
20 committed three or more violations of this act may be suspended
21 for a period of one year.

22 (d) Repayment of gain.--Any provider, recipient or other
23 person who is found guilty of a crime for violating this act
24 shall repay three times the value of the material gain received.
25 In addition to the civil penalty authorized pursuant to
26 subsection (b), the department may require the provider,
27 recipient or other person to repay up to three times the value
28 of any material gain to PACENET.

29 Section 21. Prescription drug education program.

30 The department, in cooperation with the Department of Health,

1 shall develop and implement a Statewide prescription drug
2 education program designed to inform older adults of the dangers
3 of prescription drug abuse and misuse. The prescription drug
4 education program shall include, but not be limited to,
5 information concerning the following:

- 6 (1) The hazards of prescription drug overdose.
- 7 (2) The potential dangers of mixing prescription drugs.
- 8 (3) The danger of retaining unused prescription drugs
9 after the need to take them no longer exists.
- 10 (4) The necessity to carefully question physicians and
11 pharmacists concerning the effects of taking prescription
12 drugs, including the differences between brand-name drugs and
13 generically equivalent drugs.
- 14 (5) The advisability of maintaining a prescription drug
15 profile or other record of prescription drug dosage and
16 frequency of dosage.
- 17 (6) The desirability of advising family members of the
18 types and proper dosage of prescription drugs which are being
19 taken.
- 20 (7) The dangers of taking prescription drugs in excess
21 of prescribed dosages.
- 22 (8) The need to obtain complete, detailed directions
23 from the physician or pharmacist concerning the time period a
24 prescription drug should be taken.

25 Section 22. Outreach program.

26 The department, in consultation with appropriate Commonwealth
27 agencies, shall coordinate the development of an outreach plan
28 to inform potential contractors, providers and enrollees
29 regarding eligibility and available benefits of the PACENET
30 program. The plan shall include provisions for reaching special

1 populations, including nonwhite and non-English-speaking people;
2 for reaching different geographic areas, including rural and
3 inner-city areas; and for assuring that special efforts are
4 coordinated within the overall outreach activities throughout
5 this Commonwealth.

6 Section 23. Repeals.

7 (a) Specific.--Section 519 of the act of August 26, 1971
8 (P.L.351, No.91), known as the State Lottery Law, is repealed.

9 (b) Inconsistent.--The act of August 26, 1971 (P.L.351,
10 No.91), known as the State Lottery Law, is repealed insofar as
11 it is inconsistent with the provisions of this act.

12 Section 24. Effective date.

13 This act shall take effect immediately.