

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 7

Session of
2003

INTRODUCED BY ORIE, MOWERY, HELFRICK, LEMMOND, GREENLEAF,
O'PAKE, TARTAGLIONE, MUSTO, WOZNIAK, BOSCOLA, RAFFERTY AND
TOMLINSON, MAY 5, 2003

REFERRED TO AGING AND YOUTH, MAY 5, 2003

AN ACT

1 Amending the act of August 26, 1971 (P.L.351, No.91), entitled
2 "An act providing for a State Lottery and administration
3 thereof; authorizing the creation of a State Lottery
4 Commission; prescribing its powers and duties; disposition of
5 funds; violations and penalties therefor; exemption of prizes
6 from State and local taxation and making an appropriation,"
7 defining "best price"; and further providing for prescription
8 drug programs generally, for reimbursement, for the
9 Pharmaceutical Assistance Contract Needs Enhancement Tier,
10 for amount of rebate and for excessive pharmaceutical price
11 inflation discount.

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

14 Section 1. Section 502 of the act of August 26, 1971
15 (P.L.351, No.91), known as the State Lottery Law, is amended by
16 adding a definition to read:

17 Section 502. Definitions.

18 The following words and phrases when used in this chapter
19 shall have the meanings given to them in this section unless the
20 context clearly indicates otherwise:

21 * * *

22 "Best price." As defined in section 1927(c)(1)(C) of the

1 Social Security Act (49 Stat. 620, 42 U.S.C. § 1396r-
2 8(c)(1)(C)).

3 * * *

4 Section 2. Sections 509, 515, 519, 705 and 706 of the act,
5 added November 21, 1996 (P.L.741, No.134), are amended to read:
6 Section 509. Program generally.

7 The program shall include the following:

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

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

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

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

19 (5) PACE shall include a participant copayment schedule
20 for each prescription. The copayment may increase or decrease
21 on an 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 PACE and after
27 consultation with the board. The department is prohibited
28 from approving adjustments to the copayment on more than an
29 annual basis.

30 (6) The program shall consist of payments to pharmacies

on behalf of eligible claimants [for]:

(i) For single-source drugs, 90% of the average wholesale costs of prescription drugs which exceed the copayment, plus a dispensing fee of at least \$3.50 or the dispensing fee established by the department by regulation, whichever is greater.

(ii) For multiple-source drugs, the department shall adopt the Federal upper reimbursement limit for each multiple-source drug for which the FDA has rated three or more products therapeutically and pharmaceutically equivalent, regardless of whether all such additional formulations are rated as such and shall use only such formulations when determining any such upper limit.

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

Section 515. Reimbursement.

For-profit third-party insurers, health maintenance organizations 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 519. The Pharmaceutical Assistance Contract for the Elderly Needs Enhancement Tier.

(a) Establishment.--There is hereby established within the department a program to be known as the Pharmaceutical Assistance Contract for the Elderly Needs Enhancement Tier (PACENET).

(b) PACENET eligibility.--A claimant with an annual income of not less than \$14,000 and not more than [\$16,000] \$17,000 in the case of a single person and of not less than \$17,200 and not

1 more than [\$19,200] \$23,200 in the case of the combined income
2 of persons married to each other shall be eligible for enhanced
3 pharmaceutical assistance under this section. A person may, in
4 reporting income to the department, round the amount of each
5 source of income and the income total to the nearest whole
6 dollar, whereby any amount which is less than 50¢ is eliminated.

7 (c) Deductible.--Upon enrollment in PACENET, eligible
8 claimants in the income ranges set forth in subsection (b) shall
9 be required to meet an annual deductible in unreimbursed
10 prescription drug expenses of [\$500] \$480 per person. To qualify
11 for the deductible set forth in this subsection the prescription
12 drug must be purchased for the use of the eligible claimant from
13 a provider as defined in this chapter. The department, after
14 consultation with the board, may approve an adjustment in the
15 deductible on an annual basis. The annual deductible may be met
16 through unreimbursed drug expenses of \$40 per person per
17 calendar month.

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

21 (i) eight dollars for noninnovator multiple source
22 drugs as defined in section 702; or

23 (ii) fifteen dollars for single-source drugs and
24 innovator multiple-source drugs as defined in section
25 702.

26 Section 705. Amount of rebate.

27 (a) Single-source drugs and innovator multiple-source
28 drugs.--With respect to single-source drugs and innovator
29 multiple-source drugs, each manufacturer shall remit a rebate to
30 the Commonwealth. Except as otherwise provided in this section,

1 the amount of the rebate to the Commonwealth per calendar
2 quarter with respect to each dosage form and strength of single-
3 source drugs and innovator multiple-source drugs shall be as
4 follows:

5 (1) For quarters beginning after September 30, 1992, and
6 ending before January 1, 1997, the product of the total
7 number of units of each dosage form and strength reimbursed
8 by PACE and General Assistance in the quarter and the
9 difference between the average manufacturer price and 85% of
10 that price, after deducting customary prompt payment
11 discounts, for the quarter.

12 (2) For quarters beginning after December 31, 1996, the
13 product of the total number of units of each dosage form and
14 strength reimbursed by [PACE, PACENET and] designated
15 pharmaceutical programs other than PACE and PACENET in the
16 quarter and the difference between the average manufacturer
17 price and 83% of that price, after deducting customary prompt
18 payment discounts.

19 (3) For quarters beginning after December 31, 2003, the
20 product of the total number of units of each dosage form and
21 strength reimbursed by PACE and PACENET in the quarter and
22 the difference between the average manufacturer price and the
23 best price, after deducting customary prompt payment
24 discounts.

25 (b) Rebate for other drugs.--

26 (1) The amount of the rebate to the Commonwealth for a
27 calendar quarter with respect to covered prescription drugs
28 which are noninnovator multiple-source drugs shall be equal
29 to the product of:

30 (i) the applicable percentage of the average

1 manufacturer price, after deducting customary prompt
2 payment discounts, for each dosage form and strength of
3 such drugs for the quarter; and

4 (ii) the number of units of such form and dosage
5 reimbursed by PACE and General Assistance in the quarter.

6 (2) For the purposes of paragraph (1), the applicable
7 percentage for calendar quarters beginning after September
8 30, 1992, and ending before January 1, 1997, is 11%.

9 (c) Revised rebate for other drugs.--Beginning after
10 December 31, 1996:

11 (1) The amount of the rebate to the Commonwealth for a
12 calendar quarter with respect to covered prescription drugs
13 which are noninnovator multiple-source drugs shall be the
14 greater of the product of:

15 (i) the applicable percentage of the average
16 manufacturer price, after deducting customary prompt
17 payment discounts, for each dosage form and strength of
18 such drugs for the quarter; and

19 (ii) the number of units of such form and dosage
20 reimbursed by PACE, PACENET and designated pharmaceutical
21 programs in the quarter.

22 (2) For purposes of paragraph (1), the applicable
23 percentage is 17%.

24 (d) Drugs approved after act takes effect.--In the case of a
25 covered outpatient drug approved for marketing after the
26 effective date of the act of August 14, 1991 (P.L.342, No.36),
27 known as the Lottery Fund Preservation Act, any reference to
28 January 1, 1991, shall be a reference to the first day of the
29 first month during which the drug was marketed.

30 Section 706. Excessive pharmaceutical price inflation discount.

1 (a) General rule.--A discount shall be provided to the
2 department for all covered prescription drugs. The discount
3 shall be calculated as follows:

4 (1) For each quarter for which a rebate under section
5 705(a) and (b) is to be paid after December 31, 1991, and
6 before January 1, 1997, the average manufacturer price for
7 each dosage form and strength of a covered prescription drug
8 shall be compared to the average manufacturer price for the
9 same form and strength in the previous calendar year, and a
10 percentage increase shall be calculated.

11 (2) For each quarter under paragraph (1), the average
12 percentage increase in the Producer Price Index for
13 Pharmaceuticals over the same quarter in the previous
14 calendar year shall be calculated.

15 (3) If the calculation under paragraph (1) is greater
16 than the calculation under paragraph (2), the discount amount
17 for each quarter shall be equal to the product of:

18 (i) the difference between the calculations under
19 paragraphs (1) and (2); and

20 (ii) the total number of units of each dosage form
21 and strength reimbursed by PACE and General Assistance
22 and the average manufacturer price reported by the
23 manufacturer under section 704(c)(1).

24 (b) Revised general rule.--A discount shall be provided to
25 the department for all covered prescription drugs. The discount
26 shall be calculated as follows:

27 (1) [For] Except as provided in subsection (b.1), for
28 each quarter for which a rebate under section 705(a) and (c)
29 is to be paid after December 31, 1996, the average
30 manufacturer price for each dosage form and strength of a

1 covered prescription drug shall be compared to the average
2 manufacturer price for the same form and strength in the
3 previous calendar year and a percentage increase shall be
4 calculated.

5 (2) For each quarter under paragraph (1), the average
6 percentage increase in the Consumer Price Index-Urban over
7 the same quarter in the previous calendar year shall be
8 calculated.

9 (3) If the calculation under paragraph (1) is greater
10 than the calculation under paragraph (2), the discount amount
11 for each quarter shall be equal to the product of:

12 (i) the difference between the calculations under
13 paragraphs (1) and (2); and

14 (ii) the total number of units of each dosage form
15 and strength reimbursed by PACE, PACENET and designated
16 pharmaceutical programs and the average manufacturer
17 price reported by the manufacturer under section
18 704(c)(1).

19 (b.1) Discount after December 31, 2003, for PACE and
20 PACENET.--A discount in lieu of the discount provided under
21 subsection (b) shall be provided to the department for all the
22 covered prescription drugs under this subsection. The discount
23 shall be calculated as provided under this subsection. For each
24 quarter for which a discount specified in this subsection for a
25 rebate under section 705(a) and (c) is paid after December 31,
26 2003, with respect to each dosage form and strength reimbursed
27 by PACE and PACENET:

28 (1) the amount shall be increased by an amount equal to
29 the product of:

30 (i) the total number of units of each dosage form

1 and strength reimbursed by PACE and PACENET, for which
2 payment was made under section 705(a) and (c) for the
3 rebate period; and

4 (ii) the amount, if any, by which the average
5 manufacturer price for the dosage form and strength of
6 the drug for the period, exceeds the average manufacturer
7 price for such dosage form and strength for the calendar
8 quarter beginning July 1, 2003, without regard to whether
9 or not the drug has been sold or transferred to an
10 entity, including a division or subsidiary of the
11 manufacturer, after the first day of such quarter,
12 increased by the percentage by which the Consumer Price
13 Index-Urban for the quarter before the quarter in which
14 the rebate period begins exceeds such index for September
15 2003; or

16 (2) in the case of covered prescription drugs that have
17 not been marketed before October 1, 2003, the amount shall be
18 increased by an amount equal to the product of:

19 (i) the total number of units of each dosage form
20 and strength reimbursed by PACE and PACENET, for which
21 payment was made under section 705(a) and (c) for the
22 rebate period; and

23 (ii) the amount, if any, by which the average
24 manufacturer price for the dosage form and strength of
25 the drug for the period, exceeds the average manufacturer
26 price for such dosage form and strength for the first
27 full calendar quarter after the day on which the drug was
28 first marketed, without regard to whether or not the drug
29 has been sold or transferred to an entity, including a
30 division or subsidiary of the manufacturer, after the

1 first day of such quarter, increased by the percentage by
2 which the Consumer Price Index-Urban for the quarter
3 before the quarter in which the rebate period begins
4 exceeds such index for the month prior to the first month
5 of the first full calendar quarter after the day on which
6 the drug was first marketed.

7 (c) New bemarketed drugs.--For covered prescription drugs
8 that have not been marketed for a full calendar year, subsection
9 (a) shall apply after the covered prescription drug has been on
10 the market for four consecutive quarters. The drug's initial
11 average manufacturer price shall be based on the first day of
12 the first quarter that the drug was marketed.

13 Section 3. This act shall take effect in 60 days.