

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL**No. 855** Session of
2003

INTRODUCED BY ORIE, JULY 8, 2003

REFERRED TO PUBLIC HEALTH AND WELFARE, JULY 8, 2003

AN ACT

1 Amending the act of July 8, 1986 (P.L.408, No.89), entitled, as
2 reenacted and amended, "An act providing for the creation of
3 the Health Care Cost Containment Council, for its powers and
4 duties, for health care cost containment through the
5 collection and dissemination of data, for public
6 accountability of health care costs and for health care for
7 the indigent; and making an appropriation," providing for
8 pharmaceutical advertising and promotional expense disclosure
9 and cost containment.

10 The General Assembly finds and declares as follows:

11 (1) More than almost all other consumer purchases, the
12 ability to purchase medications has a direct, discernible
13 impact on the health and life of this Commonwealth's
14 citizens.

15 (2) A substantial and significant portion of the
16 prescription drug price and cost to the consumer and the
17 Commonwealth is represented by advertising, particularly
18 direct-to-consumer advertising through mass media, and
19 advertising through the education of the personnel of managed
20 care plans, pharmaceutical benefits management companies,
21 hospitals and clinics and health care professionals by means

1 of salespersons' detailing, seminars and conferences, and
2 indirect advertising and promotion to health care
3 professionals and their staffs and the personnel of managed
4 care plans, and pharmaceutical benefits management companies,
5 hospitals and clinics through entertainment, meals, travel,
6 trips, promotional items, free samples and free supplies, all
7 of which also include the salaries of drug representatives
8 and salespersons.

9 (3) There is a marked increase in spending by
10 pharmaceutical companies and distributors for direct-to-
11 consumer advertising since the relaxation of Federal
12 regulations in 1997.

13 (4) Researchers have indicated that assumptions of the
14 amount of advertising are based on extrapolation from data in
15 the public domain since they were unable to obtain data
16 directly from the pharmaceutical companies.

17 (5) Pharmaceutical companies claim that advertising
18 dollars are well spent in that they facilitate dialogue
19 between patients and doctors about diseases and conditions
20 that are widely undertreated, thereby leading to diagnoses
21 and prescriptions that save lives or even greater costs
22 resulting from delays in treatment, while consumer groups
23 claim that advertising may result in consumers making
24 inappropriate demands for newer, costlier medicines, when
25 less expensive drugs may be as or more appropriate.

26 (6) Health insurance companies claim that direct-to-
27 consumer advertising motivates consumers to go to the doctor
28 to ask for more expensive drugs than necessary or for
29 unnecessary drugs which, in turn, is responsible in part for
30 large increases in health insurance premiums.

1 (7) There are no accurate reported figures on what
2 pharmaceutical companies and distributors spend on
3 advertising, educational and promotional activities engaged
4 in with managed care plans and pharmaceutical benefits
5 management companies to influence market share.

6 (8) The Commonwealth is a major purchaser of
7 prescription medications amounting to over one billion
8 dollars per year, attributable to increases in prices and
9 costs with a projected annual increase of 18%.

10 (9) Pharmaceutical companies claim that any action by
11 the government to deal with those increasing prices and costs
12 will have a negative impact on their capacity to engage in
13 vital research and development.

14 (10) The General Assembly needs data that is reliable
15 and valid, and pharmaceutical companies have not been
16 responsive to the General Assembly's requests for such data.

17 (11) The General Assembly has determined that it must
18 require pharmaceutical companies and distributors to provide
19 data through the disclosure of their expenditures for mass
20 media direct-to-consumer advertising, correspondence to
21 consumers and direct and indirect advertising through
22 education, entertainment and promotional giveaways for health
23 care professionals and their staffs, and for the personnel of
24 managed care plans and pharmaceutical benefits management
25 companies and hospitals and clinics.

26 (12) The Health Care Cost Containment Council was
27 established to contain health care costs and to identify
28 appropriate utilization practices through the collection and
29 dissemination of data obtained from appropriate sources.

30 (13) Adding to the duties of the council to collect data

1 and provide reports on prescription drug advertising and
2 promotional activities which influence health care costs is
3 consistent with the policy expressed in this act to promote
4 health care costs containment and to identify appropriate
5 utilization practices in order to contain costs and to assure
6 access to quality care through the dissemination of data to
7 purchasers and consumers of health care and to public
8 officials who determine health-related programs and policies.

9 (14) The council is best situated to aid the General
10 Assembly in determining if this Commonwealth's citizens
11 benefit from the additional prices and costs of prescription
12 drugs attributable to advertising and promotional activities
13 through a reduction in inpatient hospital stays, ambulatory
14 care, invasive procedures and visits to health care
15 professionals.

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

18 Section 1. The act of July 8, 1986 (P.L.408, No.89), known
19 as the Health Care Cost Containment Act, reenacted and amended
20 June 28, 1993 (P.L.146, No.34), is amended by adding a section
21 to read:

22 Section 11.1. Pharmaceutical advertising and promotional
23 expense disclosure and cost containment.

24 (a) Cost/benefit analysis.--

25 (1) The council shall conduct a cost/benefit analysis of
26 advertising and promotional activities associated with the
27 provision of prescription drugs to this Commonwealth's
28 citizens by pharmaceutical companies and distributors.

29 (2) The council shall utilize a methodology to determine
30 the impact upon the necessity for inpatient hospital care,

1 major ambulatory services, invasive procedures, numbers of
2 visits to health care professionals and health insurance
3 premium rates relative to the costs associated with
4 advertising and promotional activities directed toward this
5 Commonwealth's citizens by pharmaceutical companies and
6 distributors.

7 (3) At reasonable intervals, as determined by the
8 council, pharmaceutical companies and distributors, which
9 provide prescription drugs in this Commonwealth, shall
10 provide the council with information necessary to carry out
11 its duties under this section.

12 (4) Pharmaceutical companies and distributors or their
13 representatives, who provide prescription drugs in this
14 Commonwealth, shall disclose in the aggregate all advertising
15 and promotional costs to the council as follows:

16 (i) For every health care professional who
17 prescribes prescription drugs and for every managed care
18 plan, pharmaceutical benefits management company,
19 hospital and clinic which provides prescription drugs,
20 the dollar amounts spent on the professional, that
21 professional's staff and the personnel of the managed
22 care plan and the pharmaceutical benefits management
23 company, hospital and clinic, and the dollar amount of
24 the portion of the pharmaceutical companies' and
25 distributors' detail persons' salaries attributable to
26 activities listed below:

27 (A) Education and educational materials,
28 regardless of whether provided in the place of
29 business of the health care professional, the managed
30 care plan, the pharmaceutical benefits management

1 company, the hospital or clinic or, in another
2 setting, and regardless of whether the pharmaceutical
3 company and distributor directly or indirectly
4 provides the education and educational materials.

5 (B) Food and entertainment.

6 (C) Gifts, or anything which is received without
7 consideration of equal or greater value.

8 (D) Trips.

9 (E) Travel.

10 (F) Free samples.

11 (G) Seminars.

12 (H) Reduced prices on prescription drugs.

13 (I) Income.

14 (J) Honoraria.

15 (5) Pharmaceutical companies and distributors which
16 advertise in media to reach a Pennsylvania audience and
17 pharmaceutical companies and distributors which correspond
18 directly with consumers shall disclose the aggregate cost of
19 the advertising of prescription drugs in the media and in
20 correspondence to the consumer. For purposes of this
21 paragraph, media shall include, but not be limited to, radio,
22 television, the Internet and daily and weekly magazines and
23 newspapers, billboards and signs and correspondence shall
24 mean direct mail, telephone communications and electronic
25 mail directed to specific individuals or households.
26 Aggregate cost shall include the cost of acquiring provider
27 profits from the Federal Government and any physicians'
28 master file from any professional organization.

29 (6) Pharmaceutical companies and distributors referred
30 to in paragraphs (4) and (5) shall disclose the aggregate of

1 the portion of salaries of their drug representatives and
2 salespersons who have all or part of their employment in
3 activities enumerated in paragraph (4) or (5), or both.

4 (b) Collection, compilation analysis and comparison.--The
5 council shall collect and compile data from pharmaceutical
6 companies and distributors required to provide information under
7 this act. The council shall use appropriate measures to analyze
8 and compare data with data on inpatient hospital stays,
9 ambulatory services, invasive procedures and visits to health
10 care professionals to conduct the cost/benefit analysis required
11 under subsection (a)(1).

12 (c) Dissemination of data and recommendations.--

13 (1) The council shall disseminate data in accordance
14 with this act and shall, no later than one year from the
15 effective date of this section, make recommendations to the
16 General Assembly on the costs associated with advertising and
17 promotional activities by pharmaceutical companies and
18 distributors. Such recommendations may include, but are not
19 limited to, the necessity of imposing price controls, the
20 efficacy of bulk purchasing and the institution of
21 educational programs to maintain good health with or without
22 prescription drugs.

23 (2) The council shall, within two years of the effective
24 date of this section, publish a report on the impact of
25 advertising and promotional activities upon the necessity of
26 inpatient hospital stays, ambulatory care, invasive
27 procedures, visits to health care professionals and health
28 insurance premium rates.

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