PRINTER'S NO. 1358

THE GENERAL ASSEMBLY OF PENNSYLVANIA

# SENATE BILL

## No. 900 Session of 2011

INTRODUCED BY COSTA, HUGHES, WASHINGTON, ERICKSON, FONTANA, TARTAGLIONE, SOLOBAY, SCHWANK, LEACH, BREWSTER, FARNESE AND YUDICHAK, JUNE 15, 2011

REFERRED TO AGING AND YOUTH, JUNE 15, 2011

AN ACT

Amending the act of August 26, 1971 (P.L.351, No.91), entitled "An act providing for a State Lottery and administration thereof; authorizing the creation of a State Lottery Commission; prescribing its powers and duties; disposition of funds; violations and penalties therefor; exemption of prizes from State and local taxation and making an appropriation," providing for a single pharmacy benefits manager for a Drug Utilization Review Committee and its duties and for rebate agreements governing reimbursement by certain public plans; and imposing powers and duties on the Department of Aging.

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

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

CHAPTER 11

FAIR PRESCRIPTION DRUG PROVISIONS

Section 1101. Short title of chapter.

This chapter shall be known and may be cited as the Fair Prescription Drug Act.

Section 1102. 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:

"Best price." As defined under section 1927 of the Social Security Act (49 Stat. 620, 42 U.S.C. § 301 et seq.).

"Committee." The Drug Utilization Review Committee formed in accordance with section 1105.

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

"Medical Assistance Program." The program established pursuant to Article IV, subarticle (f) of the act of June 13, 1967 (P.L.31, No.21), known as the Public Welfare Code.

"Medicare card." The identification card issued by the Federal Government to Medicare recipients.

"Medicare recipient." An individual residing in this Commonwealth who receives benefits under Part A of Subchapter XVIII of Chapter 7 of the Social Security Act (49 Stat. 620, 42 U.S.C. § 301 et seq.) or who is enrolled under Part B of such subchapter.

"PACE." As defined under section 502.

"PACENET." As established under section 519.

"Pharmaceutical manufacturer." A manufacturer of prescription drugs, insulin, insulin needles or insulin syringes.

"Pharmacy." A pharmacy licensed by the Commonwealth.

"Pharmacy benefits manager" or "PBM." An entity under contract with the Secretary of Aging to administer any prescription program established by the Commonwealth or in which a contribution by the Commonwealth is required.

"Pharmacy services." Medically necessary prescription drugs and other pharmacy services furnished directly to eligible

recipients by pharmacies.

"Prescription drug." A drug requiring a prescription in this Commonwealth, insulin, insulin syringes and insulin needles. The term does not include experimental drugs or drugs prescribed for wrinkle removal or hair growth.

"Provider." A pharmacy or licensed prescriber who provides pharmacy services to a recipient of any prescription program established by the Commonwealth or in which a contribution by the Commonwealth is required.

"Public plan." The PACE and PACENET programs, the Medical Assistance Program, the State Employees' Benefit Trust Fund, the State Employees' Retirement System, the Public School Employees' Retirement System and any other State agency or designated pharmaceutical program that purchases or arranges for the purchase of prescription medications. The term does not include pharmacy benefits provided by a health maintenance organization through the Medical Assistance Program established under the act of June 13, 1967 (P.L.31, No.21), known as the Public Welfare Code.

"Public School Employees' Retirement System." The retirement system established by 24 Pa.C.S. Part IV (relating to retirement for school employees).

"Secretary." The Secretary of Aging of the Commonwealth.

"State agency." Any agency under the jurisdiction of the Governor, the General Assembly or the Unified Court System that purchases or provides coverage for prescription medications.

"State Employees' Benefit Trust Fund." The trust fund established to purchase health insurance coverage, including coverage for prescription medications, for State employees.

"State Employees' Retirement System." The retirement system

established under 71 Pa.C.S. Part XXV (relating to retirement for State employees and officers).

Section 1103. Single pharmacy benefits manager.

The secretary shall administer a single pharmacy benefits manager program as described in this chapter. No later than 90 days from the effective date of this chapter, the secretary shall issue a request for proposal for a three-year contract with a pharmacy benefits manager to administer pharmacy services as required under this chapter. The proposal shall require the PBM to educate providers and public plan recipients of pharmacy services. No person, partnership, corporation or entity which holds a 5% or greater interest in one or more pharmacies, a chain of pharmacies, a pharmacists association, an organization of pharmacies, a drug wholesaler or drug manufacturer and no person, partnership, corporation or entity in which one or more pharmacies, a chain of pharmacies, a pharmacists association, an organization of pharmacies, a drug wholesaler or drug manufacturer has a 5% or greater interest shall be considered eligible to bid. The contract shall be executed within six months from the effective date of this chapter.

Section 1104. Pharmacy benefits manager functions.

(a) Requirements.--The secretary shall require the PBM to:

(1) Manage and implement the drug formulary for each public plan and at a later date make a recommendation to the secretary as to whether a uniform formulary for all public plans under this chapter should exist, along with a sample uniform formulary.

(2) Ensure that any pharmacy licensed in this Commonwealth is eligible to provide pharmacy services according to any regulations in effect on the effective date

of this chapter and that regulate pharmacy providers.

(3) Negotiate drug rebates with manufacturers.

(4) In accordance with the act of November 24, 1976 (P.L.1163, No.259), referred to as the Generic Equivalent Drug Law, make provisions for generic substitutions and require pharmacists to disclose any affiliation with a generic manufacturer.

(5) Provide for prospective drug utilization review which precludes overriding alerts without intervention.

(6) Provide for prior authorization in accordance with regulations of the secretary.

(7) Provide for prospective and concurrent and retrospective drug utilization review to ensure that prescriptions are appropriate, medically necessary and not likely to result in adverse medical results and to educate providers and recipients of pharmacy services through public plans and to correct and report misutilization and abuse by licensed prescribers and recipients and provide for fraud and abuse audits, coordinating its activities with the secretary to support compliance with applicable laws and regulations.

(8) Educate providers on disease and care management.

(9) Provide educational materials for public plan recipients of pharmacy services on disease and care management.

(10) In accordance with the provisions of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508, 104 Stat. 1388), bill, recoup and relay to the secretary manufacturers' drug rebates and excessive consumer price inflation discounts and resolve disputes, as defined in the Omnibus Budget Reconciliation Act of 1990.

(11) Adjudicate claims through a Statewide point-of-sale electronic verification and claims processing system which will allow for intervention upon receipt of a prospective drug utilization review alert and will allow for an emergency supply of prescribed medication in the event of equipment failures.

(12) Create an audit and recoupment system for providers and recipients, and third-party medical resources.

(13) Coordinate with all public plans the reimbursement to pharmacies on a fee-for-service basis.

(b) Conflict of interest.--In implementing the formulary, the single PBM shall demonstrate how it will avoid a conflict of interest with any pharmaceutical manufacturer, wholesaler or drug store chain that holds a less-than-5% interest in the PBM or in which the PBM has a less-than-5% interest and shall indicate how it will prevent the sharing of nonpublic information concerning other drug manufacturers' bids, proposals, contracts, prices, rebates or discounts.

(c) Considerations.--In preparing and managing the formulary, the PBM shall ensure that it will consider all discounts, rebates or other concessions offered by manufacturers, drug chains or wholesale drug companies.

Section 1105. Drug Utilization Review Committee.

(a) Formation.--The secretary shall require the PBM to form a drug utilization review committee.

(b) Composition and number.--The committee shall be comprised of 15 members, five of whom shall be actively practicing physicians licensed in this Commonwealth, five of whom shall be actively practicing pharmacists licensed in this Commonwealth and five of whom shall be consumers who reside in

this Commonwealth. None of the members may hold a 5% or greater interest in the PBM, its parent company or companies, or in a company or companies owned by the PBM. The Governor, the President pro tempore of the Senate, the Speaker of the House of Representatives, the Minority Leader of the Senate and the Minority Leader of the House of Representatives shall each appoint one physician, pharmacist and consumer member. Of the original members, each appointing authority shall designate one member appointed by the authority to serve for an initial term of two years, one member to serve for an initial term of three years and one member to serve for an initial term of four years. Thereafter each appointment shall be for a term of four years. A member shall serve until a successor is appointed. Vacancies shall be filled in the same manner as the original appointments.

(c) Quality of care.--

(1) The committee shall develop a system that provides prospective, concurrent and retrospective review of drug utilization to ensure that pharmacy services provided are or were appropriate and medically necessary and not likely to result in adverse medical results. The review program shall be designed to educate licensed prescribers and pharmacists as provided in paragraph (4) on the proper utilization of drugs in disease and care management. In reviewing drug utilization, the committee shall assess data on drug use against predetermined standards consistent with the American Hospital Formulary Service Drug Information, the United States Pharmacopeia-Drug Information, American Medical Association Drug Evaluations or peer-reviewed medical literature.

(2) The committee shall develop a system to utilize the

compendia and literature referred to in paragraph (1) as its source of standards to screen for potential drug problems before a prescription is filled or delivered to a recipient. Prospective drug use review shall include consultation with recipients by pharmacists.

(3) The secretary and the PBM shall provide data to the committee, through mechanized drug claims processing and retrieval systems, for the ongoing periodic examination of claims data and other records in order to identify patterns of fraud, abuse, gross overuse or inappropriate or medically unnecessary care among licensed prescribers, pharmacists and recipients or associated with specific drugs or groups of drugs. The committee shall, on an ongoing basis, assess data on drug use against explicit predetermined standards using the compendia and literature referred to in this subsection and to introduce, as necessary, remedial strategies to improve the quality of care and to conserve program funds or patient expenditures.

(4) The committee shall, using drug use data on common therapy problems, develop active and ongoing educational outreach programs to disseminate information to providers on common drug therapy problems with the aim of improving prescribing or dispensing practices. The educational programs shall include interventions for providers targeting therapy problems or individuals identified in the course of retrospective drug reviews. The committee shall reevaluate interventions from time to time to determine if the interventions were successful in improving the quality of drug therapy and shall make modifications as necessary. Intervention programs shall include:

(i) Information dissemination sufficient to ensure the ready availability to providers of information concerning the committee's duties, powers and basis for its standards.

(ii) Written, oral or electronic reminders containing patient-specific and drug-specific information and suggested changes in prescribing or dispensing practices, communicated in a manner designed to ensure the privacy of patient-related information.

(iii) Use of face-to-face discussions between health care professionals who are experts in rational drug therapy and selected prescribers and pharmacists who have been targeted for educational intervention, including discussion of optimal prescribing, dispensing or pharmacy care practices and follow-up face-to-face discussions.

(iv) Intensified review or monitoring of selected prescribers or dispensers.

(d) Corrective actions.--Should licensed prescribers or recipients continue to misutilize drugs or abuse the system, the committee shall provide information to the secretary for corrective action. In the case of prescribers, the committee shall submit a report and recommendations to the secretary for appropriate action. The secretary shall inform the PBM and the appropriate Commonwealth licensing body of any final administrative sanctions.

(e) Nonliability.--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 which result in harm to the person receiving such service.

(f) Annual report.--The secretary shall require the committee to provide an annual report describing the committee's activities, including the nature and scope of the prospective, concurrent and retrospective drug reviews, a summary of interventions used, an assessment of the impact of these educational interventions on quality of care and an estimate of the cost savings generated as a result of the program.

Section 1106. Reimbursement.

Each public plan shall reimburse pharmacies on a fee-for-service basis, using formulas established by the plan. Pharmacies reimbursed under this chapter shall be paid at fee-for-service rates no less than the rates in effect on the effective date of this chapter.

Section 1107. Rebate agreement.

(a) Required agreements.--A public plan shall not reimburse participating pharmacies for any prescription drug unless the department and the pharmaceutical manufacturer have entered into a rebate agreement covering that prescription drug.

(b) Exceptions.--Subsection (a) shall not apply if the availability of the drug is essential to the health of members of the public plan as determined by the department.

(c) Contracts.--Pharmaceutical manufacturers must enter into a rebate agreement with the department to obtain reimbursement for prescription drugs included under this chapter. The rebate agreement shall require the pharmaceutical manufacturer to provide to the department a rebate each calendar quarter in an amount to be determined. The PBM shall use its best efforts to obtain the best price for prescription drugs under this rebate

plan. The rebate shall be paid by the manufacturer not later than 30 days after the date of receipt of the information necessary to calculate the amount of the rebate.

(d) Disposition of funds.--Moneys received under this chapter in connection with public plans other than those identified in section 709 and the medical assistance program shall be deposited in the Pharmaceutical Assistance Contract for the Elderly Fund for purposes of expanding eligibility in the PACE program.

Section 1108. Pharmacies and dispensing physicians.

(a) General rule.--Pharmacies and dispensing physicians participating in the PACE program shall, as a condition of participation in that program, agree to the conditions set forth in this section.

(b) Medicare recipients.--Any pharmacy or dispensing physician participating in the PACE program shall, as a condition of participation in that program, agree to sell prescription drugs to Medicare recipients at the PACE program price. In no case shall a Medicare recipient be charged more than the price of the drug at the particular pharmacy on the date of the sale.

(c) Limitation on participation.--Any pharmacist, pharmacy or dispensing physician that is precluded or excluded for cause from the Medical Assistance Program shall be precluded or excluded from participation under this chapter.

Section 1109. Medicare recipients.

(a) General rule.--Medicare recipients shall be eligible to purchase prescription drugs at the PACE price established pursuant to Chapter 5.

(b) Procedure.--In order to receive the PACE price under

subsection (a), a Medicare recipient shall present the recipient's Medicare card to the participating provider at the time of purchase of the recipient's prescription drugs.

(c) Information to be made available.--A pharmacist, pharmacy or dispensing physician shall inform the Medicare recipient whether using the Medicare card will result in the Medicare recipient receiving the prescription drug at the lowest price available to the Medicare recipient.

Section 1110. Expansion of PACE program.

Within 18 months of the effective date of this chapter, the pharmacy benefits manager, in conjunction with the Drug Utilization Review Committee established under section 1105, shall provide to the secretary recommendations concerning the expansion of the PACE program. The recommendations shall also be submitted to the President pro tempore of the Senate and the Speaker of the House of Representatives.

Section 1111. Administration of contract.

The secretary shall administer the contract with the PBM and shall promulgate rules and regulations, as necessary, to carry out the provisions of this chapter.

Section 1112. Applicability.

This chapter shall apply to the provision of all pharmacy services under:

(1) Any prescription program established by the Commonwealth or in which a contribution by the Commonwealth is required by any managed health care plan, pharmaceutical manufacturer, licensed pharmacy, chain of pharmacies or wholesaler, except pharmacy benefits provided by a health maintenance organization through the Medical Assistance Program.

(2) The Medical Assistance Program unless the secretary, in consultation with the Department of Public Welfare, determines that such inclusion is a violation of Federal law or any existing contractual agreement.

Section 1113. Prohibited activities.

It shall be unlawful for any individual, partnership or corporation to solicit, receive, offer or pay any kickback, bribe or rebate in cash or in kind from or to any person in connection with the furnishing of services under this chapter.

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