
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2683 Session of
1994

INTRODUCED BY M. COHEN, CORRIGAN, PERZEL, MIHALICH, CLARK,
ROONEY, MELIO, YANDRISEVITS, ALLEN, TRELLO, FEE, THOMAS,
JOSEPHS, LAUGHLIN, STABACK, ROEBUCK, JAROLIN, PETRONE,
CALTAGIRONE AND DeLUCA, APRIL 11, 1994

REFERRED TO COMMITTEE ON HEALTH AND WELFARE, APRIL 11, 1994

AN ACT

1 Providing for the pricing of prescription drugs; and imposing
2 penalties.

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

5 Section 1. Short title.

6 This act shall be known and may be cited as the Prescription
7 Drug Pricing Law.

8 Section 2. Legislative findings and intent.

9 (a) Findings.--The General Assembly finds and declares as
10 follows:

11 (1) The present pricing structure of prescription drugs
12 purchased by licensed pharmacies in this Commonwealth
13 provides for substantially different acquisition costs
14 depending upon the practice setting of the registered
15 pharmacy and not necessarily based upon the quantity or
16 volume of drugs purchased.

17 (2) As a result of the above-referenced multitier

1 pricing structure, citizens of this Commonwealth purchasing
2 prescriptions through retail pharmacies are often required to
3 pay substantially higher prices than would be otherwise
4 necessary if the retail pharmacies could purchase the
5 prescription drugs from wholesalers and manufacturers at the
6 same price with the same volume discounts offered to
7 registered pharmacies in other practice settings.

8 (3) The present pricing system is anticompetitive in
9 nature as it permits some registered pharmacies to obtain
10 drugs at a substantially lower cost than competing licensed
11 pharmacies.

12 (b) Intent.--It is the intent of the General Assembly that
13 this act prohibit the practice of discriminatory pricing in the
14 purchase of prescription medications by licensed pharmacies by
15 assuring that any licensed pharmacy can obtain prescription
16 drugs at a price equivalent to that charged to any other
17 licensed pharmacy in this Commonwealth as long as the
18 prescription drugs are purchased in similar quantities and at
19 similar times.

20 Section 3. Definitions.

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

24 "Drug." Any substance subject to section 503(b)(1) of the
25 Federal Food, Drug, and Cosmetic Act (52 Stat. 1040, 21 U.S.C. §
26 503(b)(1)).

27 "Manufacturer." Any person, other than a wholesaler, who
28 trades in drugs for resale to purchasers or sale to consumers,
29 either directly or through a wholesaler, in this Commonwealth.

30 "Purchaser." Any person who engages in selling or dispensing

1 drugs directly to consumers.

2 "Wholesaler." Any person, other than a manufacturer, who
3 sells drugs to purchasers.

4 Section 4. Price discrimination prohibited.

5 (a) General rule.--Every manufacturer shall offer drugs to
6 every wholesaler or purchaser it sells to with all rights and
7 privileges offered or accorded by the manufacturer to the most
8 favored purchaser or consumer, including:

9 (1) any transaction in which a manufacturer sells to a
10 purchaser through a contractual arrangement implemented by
11 one or more wholesalers; and

12 (2) purchase prices for similar volume purchases.

13 Every manufacturer shall offer rebates, free merchandise,
14 samples and similar trade concessions on proportionally equal
15 terms to every purchaser. Nothing in this subsection prohibits
16 the giving of a discount that is justified by the economies or
17 efficiencies realized by the manufacturer resulting from volume
18 buying, including opportunities available to all purchasers on
19 equal terms to increase their volume buying through influencing
20 physician-prescribing practices or increasing their volume
21 buying resulting from agreements to place drugs on a formulary,
22 prompt payment and prompt delivery, so long as such discount is
23 made available to all purchasers on equal terms. Any discount
24 must be directly proportional to the economies and efficiencies
25 realized by the manufacturer.

26 (b) Certain discounts prohibited.--No manufacturer shall
27 provide discounts to any purchaser or wholesaler based on the
28 class of trade to which the purchaser or seller belongs.

29 (c) Application of section.--This section shall apply to any
30 purchase of drugs which shall be delivered to a purchaser or

1 purchaser facility located in this Commonwealth.

2 Section 5. Government purchases prohibited.

3 (a) Price discrimination.--No entity of State government
4 shall purchase any drugs from a manufacturer that engages in any
5 price discrimination prohibited under this section.

6 (b) Pricing arrangements.--Agencies of State government and
7 political subdivisions are not wholesalers or purchasers under
8 this act, and manufacturers and wholesalers of drugs are not
9 prohibited from according to them pricing or related
10 arrangements which are not made available to other purchasers in
11 this Commonwealth.

12 Section 6. Civil penalty.

13 (a) General rule.--Any person who violates this act or any
14 rule promulgated under this act or any order or injunction to
15 cease and desist from such violations shall be required to pay a
16 civil penalty of not less than \$1,000 nor more than \$50,000 per
17 violation.

18 (b) Treble damages.--Any purchaser or wholesaler damaged by
19 a violation of this act shall be entitled to recover treble
20 damages sustained by reason of that violation. Proof of price
21 discrimination shall constitute prima facie evidence of damage
22 to a disfavored purchaser.

23 (c) Medicaid.--Any person who violates this act or any rule
24 promulgated under this act or any order or injunction to cease
25 and desist from such violations shall for the purposes of the
26 Commonwealth Medicaid program have all of its drug entities
27 declared ineligible for sale under the Commonwealth Medicaid
28 program.

29 Section 7. Repeals.

30 All acts and parts of acts are repealed insofar as they are

- 1 inconsistent with this act.
- 2 Section 8. Effective date.
- 3 This act shall take effect in 60 days.