

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1235 Session of
1999

INTRODUCED BY STURLA, EACHUS, MYERS, COY, GEORGE, SANTONI,
DeWEESE, MUNDY, SEYFERT, M. COHEN, CAWLEY, YOUNGBLOOD,
SAINATO, THOMAS, READSHAW, BELFANTI, SCRIMENTI, CORRIGAN,
VAN HORNE, TRELLO, McCALL, TRAVAGLIO, CURRY, MELIO, FREEMAN,
SHANER, RAMOS, WALKO, LAUGHLIN, GRUITZA, BARRAR, BELARDI,
MICHLOVIC, TANGRETTI, BROWNE, PLATTS, TRICH, SURRA, WILLIAMS,
HORSEY, JOSEPHS, GRUCELA, STEELMAN, HARHAI, DALEY, WASHINGTON
AND TIGUE, APRIL 13, 1999

REFERRED TO COMMITTEE ON AGING AND YOUTH, APRIL 13, 1999

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 providing for pharmaceutical assistance for elderly persons
8 whose incomes exceed income limitations.

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

11 Section 1. The definitions of "PACENET" and "program" in
12 section 502 of the act of August 26, 1971 (P.L.351, No.91),
13 known as the State Lottery Law, added November 21, 1996
14 (P.L.741, No.134) are amended and the section is amended by
15 adding definitions to read:

16 Section 502. Definitions.

17 The following words and phrases when used in this chapter
18 shall have the meanings given to them in this section unless the

1 context clearly indicates otherwise:

2 * * *

3 ["PACENET." The Pharmaceutical Assistance Contract for the
4 Elderly Needs Enhancement Tier provided for in this chapter.]

5 "PACE Extra." The Pharmaceutical Assistance Contract for the
6 Elderly Extra program component provided for in this chapter.

7 "PACE pharmacy." A pharmacy that is enrolled as a provider
8 in the Pharmaceutical Assistance Contract for the Elderly (PACE)
9 or the General Assistance Program.

10 * * *

11 "Program." The Pharmaceutical Assistance Contract for the
12 Elderly (PACE) and the Pharmaceutical Assistance Contract for
13 the Elderly [Needs Enhancement Tier (PACENET)] Extra (PACE
14 Extra) as established by this chapter, unless otherwise
15 specified.

16 * * *

17 Section 2. Section 519 of the act, added November 21, 1996
18 (P.L.741, No.134), is amended to read:

19 [Section 519. The Pharmaceutical Assistance Contract for the
20 Elderly Needs Enhancement Tier.

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

25 (b) PACENET eligibility.--A claimant with an annual income
26 of not less than \$14,000 and not more than \$16,000 in the case
27 of a single person and of not less than \$17,200 and not more
28 than \$19,200 in the case of the combined income of persons
29 married to each other shall be eligible for enhanced
30 pharmaceutical assistance under this section. A person may, in

1 reporting income to the department, round the amount of each
2 source of income and the income total to the nearest whole
3 dollar, whereby any amount which is less than 50¢ is eliminated.

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

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

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

18 (ii) fifteen dollars for single-source drugs and
19 innovator multiple-source drugs as defined in section
20 702.]

21 Section 519. PACE Extra.

22 (a) General rule.--The department shall establish and
23 implement a program component, to be known as PACE Extra. PACE
24 Extra shall be made available to those individuals or married
25 couples whose annual incomes exceed the limits under the
26 definition of "maximum annual income" in section 502, but
27 otherwise qualify for the program.

28 (b) Program eligibility.--The department shall adopt
29 regulations relating to the determination of eligibility of
30 prospective PACE Extra participants. Once eligibility is

1 established, a PACE Extra participant, upon payment of an annual
2 \$35 enrollment fee, shall be issued a PACE Extra card for use in
3 tracking the participant's prescription drug expenditures.

4 (c) Program operation.--A PACE Extra participant shall
5 qualify for PACE upon expending money for prescription drugs
6 such that if the participant's annual income were to be reduced
7 by the costs of the prescription drug purchases, the participant
8 would meet the income requirements under the definition of
9 "maximum annual income" in section 502. The provisions of this
10 chapter shall apply to PACE Extra participants who qualify for
11 PACE by meeting the requirements of this section.

12 (d) Limitation.--Pharmaceutical assistance under this act
13 shall not be provided to a PACE Extra participant unless
14 sufficient prescription drug expenditures are made to reduce the
15 participant's annual income as described in subsection (c).

16 (e) Enrollment fee.--The \$35 annual enrollment fee shall be
17 paid to the department. The department shall use the enrollment
18 fee collected to cover PACE Extra administrative costs,
19 including the development of a tracking system described in
20 section 519.1. The amount of the fee shall be used as an offset
21 against a PACE Extra participant's annual income.

22 Section 3. The act is amended by adding a section to read:
23 Section 519.1. Tracking system.

24 The department shall develop, implement and administer a
25 tracking system to ascertain the amount PACE Extra participants
26 spend on prescription drugs. A feature of the tracking system
27 shall be the PACE Extra cards issued to participants. When a
28 participant makes a prescription drug purchase at a PACE
29 pharmacy, the participant shall present his PACE Extra card for
30 the purpose of the pharmacy tallying and maintaining a record of

1 the amounts spent on prescription drugs. The pharmacy may charge
2 the participant a 35¢ tracking fee for each prescription drug
3 purchase. Records generated through the use of PACE Extra cards
4 shall be available to the department to determine participants'
5 eligibility for the program.

6 Section 4. Section 521 of the act, added November 21, 1996
7 (P.L.741, No.134), is amended to read:

8 Section 521. Penalties.

9 (a) Prohibited acts.--It shall be unlawful for any person to
10 submit a false or fraudulent claim or application under this
11 chapter, including, but not limited to:

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

14 (2) receiving benefits or reimbursement under a private,
15 Federal or State program for prescription assistance and
16 claiming or receiving duplicative benefits hereunder;

17 (3) soliciting, receiving, offering or paying any
18 kickback, bribe or rebate, in cash or in kind, from or to any
19 person in connection with the furnishing of services under
20 this chapter;

21 (4) engaging in a pattern of submitting claims that
22 repeatedly uses incorrect National Drug Code numbers for the
23 purpose of obtaining wrongful enhanced reimbursement; or

24 (5) otherwise violating any provision of this chapter.

25 (b) Civil penalty.--In addition to any appropriate criminal
26 penalty for prohibited acts under this chapter whether or not
27 that act constitutes a crime under 18 Pa.C.S. (relating to
28 crimes and offenses), a provider who violates this section may
29 be liable for a civil penalty in an amount not less than \$500
30 and not more than \$10,000 for each violation of this act which

1 shall be collected by the department. Each violation constitutes
2 a separate offense. If the department collects three or more
3 civil penalties against the same provider, the provider shall be
4 ineligible to participate in either PACE or [PACENET] PACE Extra
5 for a period of one year. If more than three civil penalties are
6 collected from any provider, the department may determine that
7 the provider is permanently ineligible to participate in PACE or
8 [PACENET] PACE Extra.

9 (c) Suspension of license.--The license of any provider who
10 has been found guilty under this chapter shall be suspended for
11 a period of one year. The license of any provider who has
12 committed three or more violations of this chapter may be
13 suspended for a period of one year.

14 (d) Repayment of gain.--Any provider, recipient or other
15 person who is found guilty of a crime for violating this chapter
16 shall repay three times the value of the material gain received.
17 In addition to the civil penalty authorized pursuant to
18 subsection (b), the department may require the provider,
19 recipient or other person to repay up to three times the value
20 of any material gain to PACE or [PACENET] PACE Extra.

21 Section 5. The definitions of "covered prescription drug",
22 "PACENET" and "provider" in section 702 of the act, added
23 November 21, 1996 (P.L.741, No.134), are amended to read:
24 Section 702. Definitions.

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

28 * * *

29 "Covered prescription drug." A legend drug, insulin, an
30 insulin syringe or an insulin needle eligible for payment by the

1 Commonwealth under PACE, [PACENET] PACE Extra or designated
2 pharmaceutical programs.

3 * * *

4 ["PACENET." The program established under section 519.]

5 "PACE Extra." The program established under section 519.

6 "Provider." A licensed pharmacy or dispensing physician
7 enrolled as a provider in PACE, [PACENET] PACE Extra or
8 designated pharmaceutical programs.

9 * * *

10 Section 6. Sections 703, 704(b), 705, 706(b), 709 and 2102
11 of the act, added November 21, 1996 (P.L.741, No.134), are
12 amended to read:

13 Section 703. Rebate agreement.

14 (a) Requirement.--PACE, [PACENET] PACE Extra and designated
15 pharmaceutical programs shall not reimburse for any covered
16 prescription drug without a rebate agreement between the
17 department and the manufacturer of the covered prescription
18 drug.

19 (b) Exception.--Subsection (a) shall not apply if the
20 availability of the drug is essential to the health of eligible
21 claimants as determined by the department.

22 (c) Agreements.--Manufacturers of prescription drugs
23 reimbursed under PACE, [PACENET] PACE Extra and designated
24 pharmaceutical programs must enter into a rebate agreement with
25 the department under this chapter to obtain such reimbursement.
26 Nothing in this chapter shall be deemed to affect or impair any
27 agreement made under the former provisions of Chapter 6 of the
28 act of August 14, 1991 (P.L.342, No.36), known as the Lottery
29 Fund Preservation Act.

30 (d) Notice.--The department shall notify enrolled providers

of PACE, [PACENET] PACE Extra and designated pharmaceutical programs on an annual basis and, as appropriate, of all manufacturers who have entered into a rebate agreement.

(e) Drug formulary.--Except as provided in section 512, there shall be no drug formulary, prior or retroactive approval system or any similar restriction imposed on the coverage of outpatient drugs made by manufacturers who have agreements in effect with the Commonwealth to pay rebates for drugs utilized in PACE and [PACENET] PACE Extra, provided that such outpatient drugs were approved for marketing by the Food and Drug Administration. This subsection shall not apply to any act taken by the department pursuant to its therapeutic drug utilization review program under section 505.

Section 704. Terms of rebate agreement.

* * *

(b) Information.--

(1) The department shall report to each manufacturer, not later than 60 days after the end of each calendar quarter, information by zip code of provider on the total number of dosage units of each covered prescription drug reimbursed under PACE, [PACENET] PACE Extra and designated pharmaceutical programs during the quarter.

(2) A manufacturer may review the information provided under paragraph (1) and verify information. Adjustments to rebates shall be made to the extent that information indicates that utilization was greater or less than the amount previously specified.

(3) In the event that in any quarter a material discrepancy in the department's information is certified by the manufacturer prior to the due date of the rebate, the

department and the manufacturer shall, in good faith, attempt to resolve the discrepancy. If resolution is not reached within 30 days of receipt of the manufacturer's certification by the department, the manufacturer may appeal the department's decision under the department's formal fair hearings and appeals process. The manufacturer shall pay the department that portion of the rebate amount which is not disputed within the required time frame under this chapter. Any balance due, plus statutory interest, shall be paid or credited by the manufacturer or the department by the due date of the next quarterly payment after resolution of the dispute.

* * *

Section 705. Amount of rebate.

(a) Single-source drugs and innovator multiple-source drugs.--With respect to single-source drugs and innovator multiple-source drugs, each manufacturer shall remit a rebate to the Commonwealth. Except as otherwise provided in this section, the amount of the rebate to the Commonwealth per calendar quarter with respect to each dosage form and strength of single-source drugs and innovator multiple-source drugs shall be as follows:

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

(2) For quarters beginning after December 31, 1996, the

1 product of the total number of units of each dosage form and
2 strength reimbursed by PACE, [PACENET] PACE Extra and
3 designated pharmaceutical programs in the quarter and the
4 difference between the average manufacturer price and 83% of
5 that price, after deducting customary prompt payment
6 discounts.

7 (b) Rebate for other drugs.--

8 (1) The amount of the rebate to the Commonwealth for a
9 calendar quarter with respect to covered prescription drugs
10 which are noninnovator multiple-source drugs shall be equal
11 to the product of:

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

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

18 (2) For the purposes of paragraph (1), the applicable
19 percentage for calendar quarters beginning after September
20 30, 1992, and ending before January 1, 1997, is 11%.

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

23 (1) The amount of the rebate to the Commonwealth for a
24 calendar quarter with respect to covered prescription drugs
25 which are noninnovator multiple-source drugs shall be the
26 greater of the product of:

27 (i) the applicable percentage of the average
28 manufacturer price, after deducting customary prompt
29 payment discounts, for each dosage form and strength of
30 such drugs for the quarter; and

(ii) the number of units of such form and dosage reimbursed by PACE, [PACENET] PACE Extra and designated pharmaceutical programs in the quarter.

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

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

Section 706. Excessive pharmaceutical price inflation discount.

* * *

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

(1) For each quarter for which a rebate under section 705(a) and (c) is to be paid after December 31, 1996, the average manufacturer price for each dosage form and strength of a covered prescription drug shall be compared to the average manufacturer price for the same form and strength in the previous calendar year and a percentage increase shall be calculated.

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

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

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

(ii) the total number of units of each dosage form and strength reimbursed by PACE, [PACENET] PACE Extra and designated pharmaceutical programs and the average manufacturer price reported by the manufacturer under section 704(c)(1).

* * *

Section 709. Disposition of funds.

(a) PACE and [PACENET] PACE Extra.--Money received under this chapter in connection with PACE and [PACENET] PACE Extra shall be deposited in the Pharmaceutical Assistance Contract for the Elderly Fund.

(b) Designated pharmaceutical programs.--Money received under this chapter in connection with designated pharmaceutical programs shall be treated as a refund of expenditures to the appropriation which originally provided the funding for the pharmaceutical purchase.

Section 2102. Annual report to General Assembly.

(a) Submission of report.--The department shall submit a report no later than April 1 of each year to the chairman and minority chairman of the Aging and Youth Committee of the Senate, the chairman and minority chairman of the Aging and Youth Committee of the House of Representatives and the Pharmaceutical Assistance Review Board.

(b) Collection of data.--The department shall maintain monthly statistical records on PACE and [PACENET] PACE Extra, including the level of participation and any patterns of unusual drug usage for purposes of formulating the annual report.

(c) Information for inclusion in annual report.--The annual

1 report shall contain, but not be limited to, all information
2 relating to:

3 (1) The number of persons served by PACE and [PACENET]
4 PACE Extra and their counties of residence.

5 (2) A breakdown of the numbers and kinds of
6 pharmaceuticals used.

7 (3) The cost of prescriptions.

8 (4) An estimate of actual expenses incurred by
9 pharmacists participating in the program.

10 (5) The results obtained by the drug education program
11 under section 522.

12 (6) Information regarding the operation of the
13 therapeutic drug utilization review system for the prior
14 calendar year, which shall include, at a minimum:

15 (i) The scope of physician and pharmacist
16 participation in the system.

17 (ii) A description of claimant response to the
18 system.

19 (iii) Data for each month of the covered period
20 regarding the number of prescription revisions based on
21 utilization review, including drug information, cost
22 savings and the policy used by the department to make
23 utilization review decisions.

24 (7) Information on the existence and scope of fraudulent
25 activity and violations of this act by providers
26 participating in PACE and [PACENET] PACE Extra.

27 (8) Information regarding the financial status of PACE
28 and [PACENET] PACE Extra, including, but not limited to, the
29 adequacy of any applicable deductible and copayment levels,
30 based upon the financial experience and projections of PACE

1 and [PACENET] PACE Extra.

2 Section 7. This act shall take effect in 60 days.