

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL**No. 1400** Session of
2002

INTRODUCED BY MURPHY, TOMLINSON, MOWERY, ERICKSON, BELL,
ROBBINS, HOLL, HELFRICK, GERLACH, EARLL, DENT, C. WILLIAMS,
ORIE, PICCOLA, PUNT, RHOADES, M. WHITE, MADIGAN, BOSCOLA AND
LEMMOND, APRIL 15, 2002

SENATOR MURPHY, AGING AND YOUTH, AS AMENDED, APRIL 16, 2002

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 further providing for definitions, for drug utilization
8 review system, for program generally and for supply;
9 providing for a mail order program for maintenance drugs;
10 further providing for reimbursement and for Pharmaceutical
11 Assistance Contract for the Elderly Needs Enhancement Tier;
12 providing for Pharmaceutical Assistance Contract for the
13 Elderly Needs Enhancement Tier Plus, for senior wellness
14 program, for prescription drug clearinghouse, for provider
15 assistance, for priority of prescription drug assistance;
16 defining "best price," "average wholesale cost" and "average
17 wholesale price"; further providing for terms of rebate
18 agreement, for amount of rebate, for excessive pharmaceutical
19 price inflation discount and for disposition of funds; and
20 providing for interstate bulk purchasing program AND FOR FAIR ←
21 PRESCRIPTION DRUG PROVISIONS.

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

24 Section 1. The definition of "program" in section 502 of the
25 act of August 26, 1971 (P.L.351, No.91), known as the State
26 Lottery Law, added November 21, 1996 (P.L.741, No.134), is

1 amended and the section is amended by adding definitions to
2 read:

3 Section 502. Definitions.

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

7 * * *

8 "Mail order program." A program to dispense prescription
9 drugs by postal delivery service designated and administered by
10 the Department of Aging, and any entity with which it contracts,
11 upon an enrollee's submission of a prescription and the
12 applicable copayment.

13 "Maintenance drug." A prescription drug prescribed to an
14 individual for a chronic condition, the use of which is
15 medically necessary for a consecutive period of 16 days or
16 longer.

17 * * *

18 "PACENET Plus." The Pharmaceutical Assistance Contract for
19 the Elderly Needs Enhancement Tier Plus provided for in this
20 chapter.

21 * * *

22 "Program." The Pharmaceutical Assistance Contract for the
23 Elderly (PACE) [and], the Pharmaceutical Assistance Contract for
24 the Elderly Needs Enhancement Tier (PACENET) as established by
25 this chapter and the Pharmaceutical Assistance Contract for the
26 Elderly Needs Enhancement Tier Plus (PACENET Plus) as
27 established by this chapter, unless otherwise specified.

28 * * *

29 "Unreimbursed prescription drug expenses." This term does
30 not include enrollment fees paid under the program.

1 Section 2. Section 505 of the act, added November 21, 1996
2 (P.L.741, No.134), is amended to read:

3 Section 505. Drug utilization review system.

4 (a) General rule.--The department shall ensure that a state-
5 of-the-art therapeutic drug utilization review system is
6 established to monitor and correct misutilization of drug
7 therapies.

8 (b) Technical advisory committee.--The department shall
9 establish a technical advisory committee comprised of a
10 sufficient number of practicing pharmacists, physicians,
11 academic pharmacologists and at least one pharmacoeconomist to
12 recommend a list of preferred single-source drugs and preferred
13 innovator multiple-source drugs, based on medical efficacy and
14 cost and provide the department with technical assistance
15 related to drugs dispensed under the program.

16 (c) Preferred drug list.--From the list recommended by the
17 technical advisory committee, the secretary shall establish a
18 list of drugs to be reimbursed by the program.

19 Section 3. Section 509(6) of the act, added November 21,
20 1996 (P.L.741, No.134), is amended and the section is amended by
21 adding paragraphs to read:

22 Section 509. Program generally.

23 The program shall include the following:

24 * * *

25 (6) [The] (i) Except as provided in subparagraph (ii),
26 the program shall consist of payments to pharmacies on behalf
27 of eligible claimants for 90% of the average wholesale costs
28 of prescription drugs which exceed the copayment, plus a
29 dispensing fee of at least \$3.50 or the dispensing fee
30 established by the department by regulation, whichever is

1 greater.

2 (ii) For A-rated generic therapeutically equivalent
3 drugs, the program shall consist of payments to
4 pharmacies on behalf of eligible claimants for the upper
5 limits established under 42 CFR § 447.332 (relating to
6 upper limits for multiple source drugs), plus a
7 dispensing fee of \$3.50, or the dispensing fee
8 established by the department by regulation, whichever is
9 greater.

10 This paragraph shall not apply to prescription drugs
11 dispensed under paragraph (9).

12 * * *

13 (8) The department shall establish a medical exception
14 process whereby a prescribing physician may provide, online
15 or otherwise, clinical justification for an eligible claimant
16 to receive a prescription drug that is not on the preferred
17 provider list established under section 505(c).

18 (9) (i) Except as provided in subparagraph (ii), in no
19 case shall an eligible claimant who is enrolled in
20 PACENET or PACENET Plus but who has not yet satisfied the
21 deductibles required by this chapter be charged more than
22 90% of the average wholesale costs of prescription drugs
23 which exceed the copayment, plus a dispensing fee of at
24 least \$3.50 or the dispensing fee established by the
25 department by regulation, whichever is greater.

26 (ii) For A-rated generic therapeutically equivalent
27 drugs, such eligible claimant shall not be charged more
28 than the upper limits established under 42 C.F.R. §
29 447.332, plus a dispensing fee of at least \$3.50 or the
30 dispensing fee established by the department by

1 regulation, whichever is greater.

2 (10) The Commonwealth shall make payments to pharmacies
3 for prescription drugs dispensed to eligible claimants under
4 paragraph (9) in an amount equal to the difference between
5 the total amount paid by the eligible claimant under
6 paragraph (9) and the price of the drug at the particular
7 pharmacy on the date of the sale.

8 Section 4. Section 511 of the act, added November 21, 1996
9 (P.L.741, No.134), is amended to read:

10 Section 511. Supply.

11 [Prescription] Except as may be provided in section 513.1 for
12 maintenance drugs, prescription benefits for any single
13 prescription shall be limited to a 30-day supply of the
14 prescription drug or 100 units, whichever is less, except that,
15 in the case of diagnosis for acute conditions, the limitation
16 shall be a 15-day supply. This limitation shall not apply to
17 topical ointments or gels that are not available in containers
18 which meet the size and supply restrictions set forth in this
19 section.

20 Section 5. The act is amended by adding a section to read:
21 Section 513.1. Mail order program for maintenance drugs.

22 (a) General rule.--The department may offer a mail order
23 program for the delivery of maintenance drugs under the program.

24 (b) Pharmacy participation.--A pharmacy enrolled as a
25 provider may participate in any mail order program offered by
26 the department. Participating pharmacies must offer mail order
27 program participants or the participant's designated
28 representative the opportunity for face-to-face consultation at
29 least once every 30 days. The department shall pay a
30 consultation fee of \$35 per hour on a prorated basis for

1 consultation services provided for selected prescription drugs
2 as determined by the technical advisory committee.

3 Section 6. Sections 515 and 519 of the act, amended or added
4 November 21, 1996 (P.L.741, No.134), are amended to read:

5 Section 515. Reimbursement.

6 For-profit third-party insurers, health maintenance
7 organizations and not-for-profit prescription plans shall be
8 responsible for any payments made by the program to a [providing
9 pharmacy] provider on behalf of a claimant covered by such a
10 third party.

11 Section 519. The Pharmaceutical Assistance Contract for the
12 Elderly Needs Enhancement Tier.

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

17 (b) PACENET eligibility.--

18 (1) A claimant with an annual income of not less than
19 \$14,000 and not more than [\$16,000] \$17,000 in the case of a
20 single person and of not less than \$17,200 and not more than
21 [\$19,200] \$20,200 in the case of the combined income of
22 persons married to each other shall be eligible for enhanced
23 pharmaceutical assistance under this section.

24 (2) A person may, in reporting income to the department,
25 round the amount of each source of income and the income
26 total to the nearest whole dollar, whereby any amount which
27 is less than 50¢ is eliminated.

28 (b.1) Enrollment fee.--

29 (1) An enrollment fee of \$50 shall be paid by an
30 eligible claimant to an enrolled pharmacy of choice at the

1 time of enrollment.

2 (2) The enrolled pharmacy of choice shall deduct an
3 amount from the fee that the department approves as the
4 administrative cost to the pharmacy and shall transmit the
5 balance of the fee to the department.

6 (c) Deductible.--

7 (1) Upon enrollment in PACENET, eligible claimants in
8 the income ranges set forth in subsection (b) shall be
9 required to meet an annual deductible in unreimbursed
10 prescription drug expenses [of \$500 per person.] per person
11 as follows:

<u>Deductible</u>	<u>Single Person Income</u>	<u>Married Couple Income</u>
<u>\$300</u>	<u>\$14,000-14,999</u>	<u>\$17,200-18,199</u>
<u>350</u>	<u>15,000-15,999</u>	<u>18,200-19,199</u>
<u>400</u>	<u>16,000-17,000</u>	<u>19,200-20,200</u>

16 (2) To qualify for the deductible set forth in this
17 subsection the prescription drug must be purchased for the
18 use of the eligible claimant from a provider as defined in
19 this chapter.

20 (3) The department, after consultation with the board,
21 may approve an adjustment in the deductible on an annual
22 basis.

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

26 (i) eight dollars for noninnovator multiple source drugs
27 as defined in section 702; [or]

28 (ii) fifteen dollars for preferred single-source drugs
29 and preferred innovator multiple-source drugs as defined in
30 section 702[.];

1 (iii) twenty-five dollars for nonpreferred single source
2 drugs and nonpreferred innovator multiple-source drugs,
3 except as provided in paragraph (iv); or

4 (iv) fifteen dollars for nonpreferred single source
5 drugs and nonpreferred innovator multiple-source drugs where
6 a medical exception has been granted by the department.

7 Section 7. The act is amended by adding sections to read:

8 Section 519.1. Pharmaceutical Assistance Contract for the
9 Elderly Needs Enhancement Tier Plus.

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

14 (b) PACENET Plus eligibility.--A claimant with an annual
15 income which is not less than \$17,001 and not more than \$20,999
16 in the case of a single person, and not less than \$20,201 and
17 not more than \$25,199 in the case of the combined income of
18 persons married to each other shall be eligible for
19 participation under this section. A person may, in reporting
20 income to the department, round the amount of each source of
21 income and the income total to the nearest whole dollar, whereby
22 any amount which is less than 50¢ is eliminated.

23 (c) Enrollment fee.--

24 (1) An enrollment fee of \$50 shall be paid by an
25 eligible claimant to an enrolled pharmacy of choice at the
26 time of enrollment.

27 (2) The enrolled pharmacy of choice shall deduct an
28 amount from the fee that the department approves as the
29 administrative cost to the pharmacy and shall transmit the
30 balance of the fee to the department.

1 (d) Deductible.--

2 (1) Upon enrollment in PACENET Plus, eligible claimants
3 in the income ranges set forth in subsection (b) shall be
4 required to meet an annual deductible in unreimbursed
5 prescription drug expenses per person as follows:

<u>Deductible</u>	<u>Single Person Income</u>	<u>Married Couple Income</u>
<u>\$450</u>	<u>\$17,001-17,999</u>	<u>\$20,201-21,199</u>
<u>500</u>	<u>18,000-18,999</u>	<u>21,200-22,199</u>
<u>550</u>	<u>19,000-19,999</u>	<u>22,200-23,199</u>
<u>600</u>	<u>20,000-20,999</u>	<u>23,200-24,199</u>
<u>650</u>	<u>_____</u>	<u>24,200-25,199</u>

12 (2) To qualify for the deductible set forth in this
13 subsection the prescription drug must be purchased for the
14 use of the eligible claimant from a provider as defined in
15 this chapter.

16 (3) The department, after consultation with the board,
17 may approve an adjustment in the deductible on an annual
18 basis.

19 (e) Copayment.--For eligible claimants under this section,
20 the copayment schedule shall be the same as provided under
21 section 519(d).

22 Section 523. Senior wellness program.

23 The department shall provide eligible claimants with
24 educational materials to maintain physical and mental health.

25 Section 524. Prescription drug clearinghouse.

26 The department shall directly or by contract, establish,
27 implement and administer a prescription drug clearinghouse which
28 is easily accessible to senior citizens by means of a toll-free
29 telephone number and electronic and other mechanisms that:

30 (1) Facilitates access by senior citizens to

1 prescription drugs.

2 (2) Identifies alternatives for securing or purchasing
3 prescription drugs through public or private programs.

4 (3) Provides information resources relating to the
5 costs, coverage, policy and access to the programs under
6 paragraph (2).

7 (4) Provides such additional information which will
8 enable senior citizens to make informed reasonable choices
9 related to the purchase of prescription drugs.

10 Section 525. Provider assistance.

11 (a) General rule.--The department shall:

12 (1) Encourage and facilitate physician use of online
13 technology.

14 (2) Provide secure online and other technical assistance
15 to physicians related to prescription drugs dispensed to
16 claimants through the program, including contraindications,
17 therapeutic interchange, cost and medical exception
18 processing.

19 (b) Administration.--The department in carrying out its
20 duties under this section may enter into a contract with a
21 private contractor.

22 Section 526. Priority of prescription drug assistance.

23 If the Federal Government provides for a prescription drug
24 assistance program and participants utilizing the programs
25 offered by the Commonwealth are also qualified for coverage
26 under the Federal program, then each participant shall first
27 utilize the Federal program and may not seek Commonwealth
28 assistance until Federal eligibility is exhausted.

29 Section 8. The definitions of "covered prescription drug"
30 and "provider" in section 702 of the act, added November 21,

1 1996 (P.L.741, No.134), are amended and the section is amended
2 by adding definitions to read:

3 Section 702. Definitions.

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

7 * * *

8 "Average wholesale cost." The cost of a dispensed drug based
9 upon the price published in a national drug pricing system in
10 current use by the Department of Aging as the average wholesale
11 price of a prescription drug in the most common package size.

12 "Average wholesale price." Average wholesale cost.

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

15 * * *

16 "Covered prescription drug." A legend drug, insulin, an
17 insulin syringe or an insulin needle eligible for payment by the
18 Commonwealth under PACE, PACENET, PACENET Plus or designated
19 pharmaceutical programs.

20 * * *

21 "PACENET Plus." The program established under section 519.1.

22 * * *

23 "Provider." A licensed pharmacy or dispensing physician
24 enrolled as a provider in PACE, PACENET, PACENET Plus or
25 designated pharmaceutical programs.

26 * * *

27 Section 9. Sections 703 and 704(a) and (b) of the act, added
28 November 21, 1996 (P.L.741, No.134), are amended to read:

29 Section 703. Rebate agreement.

30 (a) Requirement.--PACE, PACENET, PACENET Plus and designated

1 pharmaceutical programs shall not reimburse for any covered
2 prescription drug without a rebate agreement between the
3 department and the manufacturer of the covered prescription
4 drug.

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

8 (c) Agreements.--Manufacturers of prescription drugs
9 reimbursed under PACE, PACENET, PACENET Plus and designated
10 pharmaceutical programs must enter into a rebate agreement with
11 the department under this chapter to obtain such reimbursement.
12 Nothing in this chapter shall be deemed to affect or impair any
13 agreement made under the former provisions of Chapter 6 of the
14 act of August 14, 1991 (P.L.342, No.36), known as the Lottery
15 Fund Preservation Act.

16 (d) Notice.--The department shall notify enrolled providers
17 of PACE, PACENET, PACENET Plus and designated pharmaceutical
18 programs on an annual basis and, as appropriate, of all
19 manufacturers who have entered into a rebate agreement.

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

30 Section 704. Terms of rebate agreement.

1 (a) Quarterly basis.--A rebate agreement shall require any
2 manufacturer of covered prescription drugs to provide to the
3 department a rebate each calendar quarter [in an amount
4 specified in section 705] in an amount which shall give the
5 department the best price for the drugs provided under PACE,
6 PACENET and PACENET Plus, for covered prescription drugs of the
7 manufacturer reimbursed during the quarter. The rebate shall be
8 paid by the manufacturer not later than 30 days after the date
9 of receipt of the information described in subsection (b) for
10 the period involved.

11 (b) Information.--

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

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

23 (3) In the event that in any quarter a material
24 discrepancy in the department's information is certified by
25 the manufacturer prior to the due date of the rebate, the
26 department and the manufacturer shall, in good faith, attempt
27 to resolve the discrepancy. If resolution is not reached
28 within 30 days of receipt of the manufacturer's certification
29 by the department, the manufacturer may appeal the
30 department's decision under the department's formal fair

1 hearings and appeals process. The manufacturer shall pay the
2 department that portion of the rebate amount which is not
3 disputed within the required time frame under this chapter.
4 Any balance due, plus statutory interest, shall be paid or
5 credited by the manufacturer or the department by the due
6 date of the next quarterly payment after resolution of the
7 dispute.

8 * * *

9 Section 10. Section 705 (a) and (c) of the act, added
10 November 21, 1996 (P.L.741, No.134), are amended and the section
11 is amended by adding a subsection to read:

12 Section 705. Amount of rebate.

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

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

28 (2) For quarters beginning after December 31, 1996
29 through December 31, 2002, the product of the total number of
30 units of each dosage form and strength reimbursed by PACE,

1 PACENET, PACENET Plus and designated pharmaceutical programs
2 in the quarter and the difference between the average
3 manufacturer price and 83% of that price, after deducting
4 customary prompt payment discounts.

5 (3) For quarters beginning after December 31, 2002, the
6 product of the total number of units of each dosage form and
7 strength reimbursed by designated pharmaceutical programs in
8 the quarter and the difference between the average
9 manufacturer price and 83% of that price, after deducting
10 customary prompt payment discounts.

11 (4) For quarters beginning after December 31, 2002, the
12 product of the total number of units of each dosage form and
13 strength reimbursed by PACE, PACENET and PACENET Plus in the
14 quarter and the difference between the average wholesale
15 price and 83% of that price, after deducting customary prompt
16 payment discounts.

17 * * *

18 (c) Revised rebate for other drugs.--Beginning after
19 December 31, 1996 through December 31, 2002:

20 (1) The amount of the rebate to the Commonwealth for a
21 calendar quarter with respect to covered prescription drugs
22 which are noninnovator multiple-source drugs shall be [the
23 greater of] equal to the best price or the product of:

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

28 (ii) the number of units of such form and dosage
29 reimbursed by PACE, PACENET, PACENET Plus and designated
30 pharmaceutical programs in the quarter[.], whichever is

1 greater.

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

4 (c.1) Revised rebate for other drugs in 2003.--Beginning
5 after December 31, 2002:

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

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

14 (ii) the number of units of such form and dosage
15 reimbursed by designated pharmaceutical programs in the
16 quarter.

17 (2) The amount of the rebate to the Commonwealth for a
18 calendar quarter with respect to covered prescription drugs
19 which are noninnovator multiple-source drugs shall be the
20 greater of the product of:

21 (i) the applicable percentage of the average
22 wholesale price, after deducting customary prompt payment
23 discounts, for each dosage form and strength of such
24 drugs for the quarter; and

25 (ii) the number of units of such form and dosage
26 reimbursed by PACE, PACENET and PACENET Plus in the
27 quarter.

28 (3) For purposes of paragraphs (1) and (2), the
29 applicable percentage is 17%.

30 * * *

1 Section 11. Section 706(b) of the act, added November 21,
2 1996 (P.L.741, No.134), is amended to read:

3 Section 706. Excessive pharmaceutical price inflation discount
4 for designated pharmaceutical programs.

5 * * *

6 (b) Revised general rule.--A discount shall be provided to
7 the department for all covered prescription drugs under
8 designated pharmaceutical programs. The discount shall be
9 calculated as follows:

10 (1) For each quarter for which a rebate under section
11 705(a) and (c) is to be paid after December 31, 1996, the
12 average manufacturer price for each dosage form and strength
13 of a covered prescription drug shall be compared to the
14 average manufacturer price for the same form and strength in
15 the previous calendar year and a percentage increase shall be
16 calculated.

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

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

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

26 (ii) the total number of units of each dosage form
27 and strength reimbursed by [PACE, PACENET and] designated
28 pharmaceutical programs and the average manufacturer
29 price reported by the manufacturer under section
30 704(c)(1).

1 * * *

2 Section 12. The act is amended by adding a section to read:

3 Section 706.1. Excessive pharmaceutical price inflation
4 discount for PACE, PACENET and PACENET Plus.

5 (a) General rule.--A discount shall be provided to the
6 department for all covered prescription drugs under PACE,
7 PACENET and PACENET Plus. The discount shall be calculated as
8 follows:

9 (1) For each quarter for which a rebate under section
10 705(a) and (c) is to be paid after December 31, 1996, through
11 December 31, 2002, the average manufacturer price for each
12 dosage form and strength of a covered prescription drug shall
13 be compared to the average manufacturer price for the same
14 form and strength in the previous calendar year and a
15 percentage increase shall be calculated.

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

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

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

25 (ii) the total number of units of each dosage form
26 and strength reimbursed by PACE, PACENET and PACENET Plus
27 and the average manufacturer price reported by the
28 manufacturer under section 704(c)(1).

29 (b) Discounts after December 31, 2002.--A discount shall be
30 provided to the department for all covered prescription drugs

1 under PACE, PACENET and PACENET Plus. The discount shall be
2 calculated as follows:

3 (1) For each quarter for which a rebate under section
4 705(a) and (c) is to be paid after December 31, 2002, the
5 average wholesale price for each dosage form and strength of
6 a covered prescription drug shall be compared to the average
7 wholesale price for the same form and strength in the
8 previous calendar year and a percentage increase shall be
9 calculated.

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

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

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

19 (ii) the total number of units of each dosage form
20 and strength reimbursed by PACE, PACENET and PACENET Plus
21 and the average wholesale price reported by the
22 manufacturer under section 704(c)(1).

23 Section 13. Section 709 of the act, added November 21, 1996
24 (P.L.741, No.134), is amended to read:

25 Section 709. Disposition of funds.

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

30 (b) Designated pharmaceutical programs.--Money received

1 under this chapter in connection with designated pharmaceutical
2 programs shall be treated as a refund of expenditures to the
3 appropriation which originally provided the funding for the
4 pharmaceutical purchase.

5 Section 14. The act is amended by adding a section to read:
6 Section 710. Interstate agreement.

7 The secretary may enter into a multistate agreement to obtain
8 additional discounts.

9 SECTION 15. THE ACT IS AMENDED BY ADDING A CHAPTER TO READ: <—

10 CHAPTER 11
11 FAIR PRESCRIPTION DRUG PROVISIONS

12 SECTION 1101. SHORT TITLE OF CHAPTER.

13 THIS CHAPTER SHALL BE KNOWN AND MAY BE CITED AS THE FAIR
14 PRESCRIPTION DRUG ACT.

15 SECTION 1102. DEFINITIONS.

16 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS CHAPTER
17 SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
18 CONTEXT CLEARLY INDICATES OTHERWISE:

19 "MEDICAL ASSISTANCE PROGRAM." THE PROGRAM ESTABLISHED
20 PURSUANT TO ARTICLE IV, SUBARTICLE (F) OF THE ACT OF JUNE 13,
21 1967 (P.L.31, NO.21), KNOWN AS THE PUBLIC WELFARE CODE.

22 "MEDICARE CARD." THE IDENTIFICATION CARD ISSUED BY THE
23 FEDERAL GOVERNMENT TO ALL MEDICARE RECIPIENTS.

24 "MEDICARE RECIPIENT." AN INDIVIDUAL RESIDING IN THIS
25 COMMONWEALTH WHO RECEIVES BENEFITS UNDER PART A OF SUBCHAPTER
26 XVIII OF CHAPTER 7 OF THE SOCIAL SECURITY ACT (49 STAT. 620, 42
27 U.S.C. § 301 ET SEQ.) OR WHO IS ENROLLED UNDER PART B OF SUCH
28 SUBCHAPTER.

29 "PACE." AS DEFINED UNDER SECTION 502.

30 "PHARMACY." A PHARMACY LICENSED BY THE COMMONWEALTH.

1 "PHARMACY SERVICES." MEDICALLY NECESSARY PRESCRIPTION DRUGS
2 AND OTHER PHARMACY SERVICES FURNISHED DIRECTLY TO ELIGIBLE
3 RECIPIENTS BY PHARMACIES.

4 "PRESCRIPTION DRUG." A DRUG REQUIRING A PRESCRIPTION IN THIS
5 COMMONWEALTH, INSULIN, INSULIN SYRINGES AND INSULIN NEEDLES. THE
6 TERM DOES NOT INCLUDE EXPERIMENTAL DRUGS OR DRUGS PRESCRIBED FOR
7 WRINKLE REMOVAL OR HAIR GROWTH.

8 "PROVIDER." A PHARMACY OR LICENSED PRESCRIBER WHO PROVIDES
9 PHARMACY SERVICES TO A RECIPIENT OF ANY PRESCRIPTION PROGRAM
10 ESTABLISHED BY THE COMMONWEALTH OR IN WHICH A CONTRIBUTION BY
11 THE COMMONWEALTH IS REQUIRED.

12 SECTION 1103. PHARMACIES AND DISPENSING PHYSICIANS.

13 (A) GENERAL RULE.--PHARMACIES AND DISPENSING PHYSICIANS
14 PARTICIPATING IN THE PACE PROGRAM SHALL, AS A CONDITION OF
15 PARTICIPATION IN THAT PROGRAM, AGREE TO THE CONDITIONS SET FORTH
16 IN THIS SECTION.

17 (B) MEDICARE RECIPIENTS.--ANY PHARMACY OR DISPENSING
18 PHYSICIAN PARTICIPATING IN THE PACE PROGRAM SHALL, AS A
19 CONDITION OF PARTICIPATION IN THAT PROGRAM, AGREE TO SELL
20 PRESCRIPTION DRUGS TO MEDICARE RECIPIENTS AT THE PACE PROGRAM
21 PRICE. IN NO CASE SHALL A MEDICARE RECIPIENT BE CHARGED MORE
22 THAN THE PRICE OF THE DRUG AT THE PARTICULAR PHARMACY ON THE
23 DATE OF THE SALE.

24 (C) LIMITATION ON PARTICIPATION.--ANY PHARMACIST, PHARMACY
25 OR DISPENSING PHYSICIAN THAT IS PRECLUDED OR EXCLUDED FOR CAUSE
26 FROM THE MEDICAL ASSISTANCE PROGRAM SHALL BE PRECLUDED OR
27 EXCLUDED FROM PARTICIPATION UNDER THIS CHAPTER.

28 SECTION 1104. MEDICARE RECIPIENTS.

29 (A) GENERAL RULE.--MEDICARE RECIPIENTS SHALL BE ELIGIBLE TO
30 PURCHASE PRESCRIPTION DRUGS AT THE PACE PRICE ESTABLISHED

1 PURSUANT TO CHAPTER 5.

2 (B) PROCEDURE.--IN ORDER TO RECEIVE THE PACE PRICE UNDER
3 SUBSECTION (A), A MEDICARE RECIPIENT SHALL PRESENT THE
4 RECIPIENT'S MEDICARE CARD TO THE PARTICIPATING PROVIDER AT THE
5 TIME OF PURCHASE OF THE RECIPIENT'S PRESCRIPTION DRUGS.

6 (C) INFORMATION TO BE MADE AVAILABLE.--A PHARMACIST,
7 PHARMACY OR DISPENSING PHYSICIAN SHALL INFORM THE MEDICARE
8 RECIPIENT WHETHER USING THE MEDICARE CARD WILL RESULT IN THE
9 MEDICARE RECIPIENT RECEIVING THE PRESCRIPTION DRUG AT THE LOWEST
10 PRICE AVAILABLE TO THE MEDICARE RECIPIENT.

11 Section ~~15~~ 16. This act shall take effect in 60 days.

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