

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2438 Session of
2006

INTRODUCED BY WALKO, BELFANTI, CALTAGIRONE, COHEN, CRAHALLA,
FABRIZIO, FRANKEL, FREEMAN, GEORGE, GERGELY, GOODMAN,
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PISTELLA, READSHAW, SANTONI, SHANER, SIPTROTH, SOLOBAY,
SURRA, TANGRETTI AND YOUNGBLOOD, FEBRUARY 7, 2006

REFERRED TO COMMITTEE ON INSURANCE, FEBRUARY 7, 2006

AN ACT

1 Regulating pharmacy benefits managers; and providing for a
2 penalty.

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 Pharmacy
7 Benefits Manager Act.

8 Section 2. Definitions.

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

12 "Covered entity."

13 (1) Any of the following:

14 (i) A nonprofit hospital or medical service
15 organization, insurer, health coverage plan or health
16 maintenance organization licensed under the laws of this

Commonwealth.

(ii) A health program administered by the Department of Health in the capacity of provider of health coverage.

(iii) An employer, labor union or other group of persons organized in this Commonwealth that provides health coverage to covered individuals who are employed or reside in this Commonwealth.

(2) The term does not include a health plan that provides coverage only for accidental injury, specified disease, hospital indemnity, Medicare supplement, disability income, long-term care or other limited benefit health insurance policies and contracts.

"Covered individual." A member, participant, enrollee, contractholder or policyholder or beneficiary of a covered entity who is provided health coverage by the covered entity. The term includes a dependent or other person provided health coverage through a policy, contract or plan for a covered individual.

"Department." The Department of Health of the Commonwealth.

"Generic drug." A chemically equivalent copy of a brand-name drug with an expired patent.

"Labeler." An entity or person that meets all of the following requirements:

(1) Receives prescription drugs from a manufacturer or wholesaler and repackages those drugs for later retail sale.

(2) Has a labeler code from the Food and Drug Administration under 21 CFR 207.20 (relating to who must register and submit a drug list).

"Pharmacy benefits management." Any of the following:

(1) The procurement of prescription drugs at a

1 negotiated rate for dispensation within this Commonwealth to
2 covered individuals.

3 (2) The administration or management of prescription
4 drug benefits provided by a covered entity for the benefit of
5 covered individuals.

6 (3) Any of the following services provided with regard
7 to the administration of pharmacy benefits:

8 (i) Mail service pharmacy.

9 (ii) Claims processing, retail network management
10 and payment of claims to pharmacies for prescription
11 drugs dispensed to covered individuals.

12 (iii) Clinical formulary development and management
13 services.

14 (iv) Rebate contracting and administration.

15 (v) Certain patient compliance, therapeutic
16 intervention and generic substitution programs.

17 (vi) Disease management programs.

18 "Pharmacy benefits manager." An entity that performs
19 pharmacy benefits management. The term includes a person or
20 entity acting for a pharmacy benefits manager in a contractual
21 or employment relationship in the performance of pharmacy
22 benefits management for a covered entity and includes mail
23 service pharmacy.

24 Section 3. Required practices.

25 A pharmacy benefits manager owes a fiduciary duty to a
26 covered entity and shall discharge that duty in accordance with
27 the provisions of Federal and State law. A pharmacy benefits
28 manager shall do all of the following:

29 (1) Perform its duties with care, skill, prudence and
30 diligence and in accordance with the standards of conduct

1 applicable to a fiduciary in an enterprise of a like
2 character and with like aims.

3 (2) Notify the covered entity in writing of any
4 activity, policy or practice of the pharmacy benefits manager
5 that directly or indirectly presents any conflict of interest
6 with the duties imposed by this act.

7 (3) Provide to a covered entity all financial and
8 utilization information requested by the covered entity
9 relating to the provision of benefits to covered individuals
10 through that covered entity and all financial and utilization
11 information relating to services to that covered entity. A
12 pharmacy benefits manager providing information under this
13 paragraph may designate that material as confidential.

14 Information designated as confidential by a pharmacy benefits
15 manager and provided to a covered entity under this paragraph
16 may not be disclosed by the covered entity to any person
17 without the consent of the pharmacy benefits manager, except
18 that disclosure may be ordered by a court of this
19 Commonwealth for good cause shown or made in a court filing
20 under seal unless or until otherwise ordered by a court.

21 Nothing in this paragraph shall limit the Attorney General's
22 civil investigative authority to investigate violations of
23 this act under the act of December 17, 1968 (P.L.1224,
24 No.387), known as the Unfair Trade Practices and Consumer
25 Protection Law.

26 (4) With regard to the dispensation of a substitute
27 prescription drug for a prescribed drug to a covered
28 individual:

29 (i) If a pharmacy benefits manager makes a
30 substitution in which the substitute drug costs more than

1 the prescribed drug, the pharmacy benefits manager shall
2 disclose to the covered entity the cost of both drugs and
3 any benefit or payment directly or indirectly accruing to
4 the pharmacy benefits manager as a result of the
5 substitution.

6 (ii) To transfer in full to the covered entity any
7 benefit or payment received in any form by the pharmacy
8 benefits manager either as a result of a prescription
9 drug substitution under subparagraph (i) or as a result
10 of the pharmacy benefits manager's substituting a lower-
11 priced generic and therapeutically equivalent drug for a
12 higher-priced prescribed drug.

13 (5) To pass any payment or benefit for the dispensation
14 of prescription drugs within this Commonwealth based on
15 volume of sales for certain prescription drugs or classes or
16 brands of drugs within this Commonwealth in full to the
17 covered entity.

18 (6) To disclose to the covered entity all financial
19 terms and arrangements for remuneration of any kind that
20 apply between the pharmacy benefits manager and any
21 prescription drug manufacturer or labeler, including
22 formulary management and drug-switch programs, educational
23 support, claims processing and pharmacy network fees that are
24 charged from retail pharmacies and data sales fees. A
25 pharmacy benefits manager providing information under this
26 paragraph may designate that material as confidential.
27 Information designated as confidential by a pharmacy benefits
28 manager and provided to a covered entity under this paragraph
29 may not be disclosed by the covered entity to any person
30 without the consent of the pharmacy benefits manager, except

1 that disclosure may be ordered by a court of this
2 Commonwealth for good cause shown or made in a court filing
3 under seal unless or until otherwise ordered by a court.
4 Nothing in this paragraph shall limit the Attorney General's
5 civil investigative authority to investigate violations of
6 this act under the Unfair Trade Practices and Consumer
7 Protection Law.

8 Section 4. Unfair Trade Practices and Consumer Protection Law.

9 A violation of any of the provisions of this act shall be
10 deemed a violation of the act of December 17, 1968 (P.L.1224,
11 No.387), known as the Unfair Trade Practices and Consumer
12 Protection Law.

13 Section 20. Applicability.

14 This act shall apply to all contracts for pharmacy benefits
15 management entered into in this Commonwealth or by a covered
16 entity in this Commonwealth, executed or renewed on or after the
17 effective date of this section. A contract executed pursuant to
18 a memorandum of agreement executed prior to the effective date
19 of this section shall be deemed to have been executed prior to
20 the effective date of this section even if the contract was
21 executed after that date.

22 Section 21. Effective date.

23 This act shall take effect in 60 days.