
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2251 Session of
2008

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READSHAW, REED, REICHLEY, SURRA, WALKO, WANSACZ, J. WHITE,
YOUNGBLOOD AND YUDICHAK, FEBRUARY 14, 2008

REFERRED TO COMMITTEE ON INSURANCE, FEBRUARY 14, 2008

AN ACT

1 Establishing One Pennsylvania, a program to consolidate and
2 unify procedures and requirements for the administration of
3 all Commonwealth-funded, Commonwealth-administered and
4 Commonwealth-supported prescription drug programs and for
5 reimbursement for pharmaceutical services.

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

8 Section 1. Short title.

9 This act shall be known and may be cited as the One
10 Pennsylvania Act.

11 Section 2. Definitions.

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

15 "Adjudication."

16 (1) Except as provided in paragraph (2), an action taken

1 by the Office of Administration, the Secretary of
2 Administration or a prescription drug plan pursuant to this
3 act that constitutes an adjudication as defined by 2 Pa.C.S.
4 § 101 (relating to definitions), including any of the
5 following:

6 (i) A decision to allow a provider to participate in
7 a prescription drug plan or to suspend, restrict or
8 revoke participation by a provider in a prescription drug
9 plan.

10 (ii) A decision by the Office of Administration to
11 include or exclude a medication from the formulary or
12 preferred drug list.

13 (iii) The establishment of provider reimbursement
14 rates and formulas.

15 (iv) A decision to grant or deny prior authorization
16 for the dispensing of prescription drugs or to approve or
17 disapprove the dispensing of drugs not included on the
18 formulary or preferred drug list.

19 (v) An action taken by the program based upon audits
20 of claims submitted for reimbursement by providers.

21 (2) An action taken by the program with respect to
22 determining recipient eligibility shall not be deemed an
23 adjudication by the Office of Administration pursuant to its
24 authority under this act. Eligibility shall be determined by
25 the agency or entity under whose authority the prescription
26 drug plan is authorized.

27 "Alerts." Electronic communications between the Office of
28 Administration or the pharmacy benefits consolidation program
29 and pharmacies providing information pertaining to the
30 implementation of this act, including any of the following:

- 1 (1) Information regarding the preferred drug lists.
- 2 (2) Preferred drug lists.
- 3 (3) Drug utilization review.
- 4 (4) Prior authorization.
- 5 (5) Disease management programs.
- 6 (6) Claims submission and adjudication procedures.
- 7 (7) Audits.
- 8 (8) Pharmacy and patient education.

9 "Best price." As defined under section 1927(c) of the Social
10 Security Act (49 Stat. 620, 42 U.S.C. § 1396r-8(c)).

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

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

19 "Office of Administration." The Office of Administration of
20 the Commonwealth.

21 "Pharmaceutical manufacturer." A manufacturer as defined by
22 section 1927(k)(5) of the Social Security Act (49 Stat. 620, 42
23 U.S.C. § 1396r-8(k)(5)).

24 "Pharmacy." A pharmacy licensed pursuant to the act of
25 September 27, 1961 (P.L.1700, No.699), known as the Pharmacy
26 Act.

27 "Pharmacy Act." The act of September 27, 1961 (P.L.1700,
28 No.699), known as the Pharmacy Act.

29 "Pharmacy services." The provision of health care services
30 defined as the practice of pharmacy by the act of September 27,

1 1961 (P.L.1700, No.699), known as the Pharmacy Act.

2 "Preferred drug list." A list of prescription medications
3 covered under a prescription drug plan that may be dispensed by
4 a prescription drug plan without prior authorization, subject to
5 applicable limits and conditions.

6 "Prescription drug." A covered outpatient drug as defined by
7 section 1927(k)(2) of the Social Security Act (49 Stat. 620, 42
8 U.S.C. § 1396r-8(k)(2)).

9 "Prescription drug plan." A Commonwealth operation or funded
10 pharmaceutical program that pays or reimburses for prescription
11 drugs dispensed to individuals enrolled in the program that is
12 supported directly or indirectly, in whole or in part, by
13 Commonwealth public funds, including, but not limited to, all of
14 the following:

15 (1) The medical assistance program, the Special
16 Pharmaceutical Benefit Program in the Department of Public
17 Welfare.

18 (2) The Pharmaceutical Assistance Contract for the
19 Elderly (PACE) and any other pharmacy program administered by
20 the Commonwealth that is recognized by the Centers for
21 Medicare and Medicaid of the United States as a State
22 pharmaceutical assistance program.

23 (3) Programs or plans paying for prescription drugs
24 dispensed to employees as a retirement or employee benefit,
25 including programs established by the Public School
26 Employees' Retirement System, the State Employees' Retirement
27 System and the State Employees' Benefit Trust Fund.

28 (4) A pharmaceutical program that utilizes funds of this
29 Commonwealth, including the State Lottery Fund, to provide
30 assistance in obtaining prescription drugs to Medicare

1 recipients.

2 (5) Programs where the Commonwealth purchases or
3 reimburses affiliates or designees for a pharmaceutical drug
4 benefit. The programs shall include the Children's Health
5 Insurance Program, Workers' Compensation Program and any
6 program involving the purchase or reimbursement of
7 pharmaceutical drugs for inmates under the Department of
8 Corrections.

9 (6) The End Stage Renal Program in the Department of
10 Health.

11 (7) All prescription drug plans that prescribe benefits
12 to members and employees of the General Assembly and the
13 unified judicial system and its retirees.

14 "Program." The One Pennsylvania pharmacy benefits
15 consolidation program established pursuant to section 3.

16 "Provider." A pharmacy, a dispensing physician or a
17 certified registered nurse practitioner enrolled as a provider
18 in the One Pennsylvania program.

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

22 "Public Welfare Code." The act of June 13, 1967 (P.L.31,
23 No.21), known as the Public Welfare Code.

24 "Retail pharmacy." A pharmacy licensed to operate pursuant
25 to the act of September 27, 1961 (P.L.1700, No.699), known as
26 the Pharmacy Act, which provides services to the general public,
27 excluding any institutional pharmacy, specialty pharmacy or
28 mail-order pharmacy.

29 "Secretary." The Secretary of Administration of the
30 Commonwealth.

1 "Social Security Act." The Social Security Act (49 Stat.
2 620, 42 U.S.C. § 301 et seq.). A reference to the Social
3 Security Act shall include regulations implementing the Social
4 Security Act adopted by the United States Department of Health
5 and Human Services or the Centers for Medicare and Medicaid
6 Services.

7 "State agency." Any of the following entities that purchases
8 or provides coverage for prescription medications:

9 (1) An agency under the jurisdiction of the Governor.

10 (2) An independent agency supported by public funds.

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

14 "State Employees' Retirement System." The retirement system
15 established under 71 Pa.C.S. Part XXV (relating to retirement
16 for State employees and officers).

17 Section 3. One Pennsylvania.

18 (a) Establishment.--The Office of Administration shall
19 establish a pharmacy benefits consolidation program to be known
20 as One Pennsylvania. The program shall administer all publicly
21 funded Commonwealth prescription drug plans through an
22 integrated system of plan administration using uniform standards
23 and requirements for the reimbursement to providers as provided
24 by this act.

25 (b) Program requirements.--The Office of Administration
26 shall do all of the following:

27 (1) Develop, manage and implement preferred drug lists
28 for all publicly funded Commonwealth prescription drug plans
29 to the extent allowed by applicable Federal law. A preferred
30 drug list shall include all prescription drugs for which a

1 manufacturer has entered into a rebate agreement pursuant to
2 section 6 and the requirements and restrictions, except for
3 prior authorization, provided by section 1927(d) of the
4 Social Security Act. A preferred drug list shall comply with
5 the standards established by Part D, section 1860D-4(b)(3) of
6 the Social Security Act and any additional regulations as may
7 be adopted by the Office of Administration pursuant to this
8 act. A current list of drugs included in the preferred drug
9 list shall be publicly available, posted electronically on
10 the Internet website of the Office of Administration and
11 communicated to pharmacies through alerts. All preferred drug
12 lists shall be uniform to the extent administratively
13 feasible under the statutory authority establishing the
14 individual prescription drug plans. The Office of
15 Administration may, in its discretion, allow exceptions to
16 the uniformity requirements in administering the individual
17 programs due to fiscal and administrative considerations.

18 (2) Adopt regulations relating to the eligibility of
19 participating providers and the adjudication of items and all
20 other provisions necessary to carry out the provisions of
21 this act. Any pharmacy shall be eligible to participate in
22 the program, provided the pharmacy complies with the
23 regulations adopted under the paragraph and other provisions
24 of this act.

25 (3) The Office of Administration shall promulgate
26 statements of policy, as necessary, to carry out the
27 provisions of this act. No statement of this policy adopted
28 by the Office of Administration shall have the force and
29 effect of law or regulation or may modify the provisions of
30 any regulations adopted by the Office of Administration. All

1 statements of policy adopted by the Office of Administration
2 shall, except in emergency circumstances, be published for
3 notice and comment prior to adoption and shall be published
4 in the Pennsylvania Bulletin.

5 (4) (i) Except as provided in subparagraph (ii), make
6 provisions for generic substitutions in accordance with
7 the act of November 24, 1976 (P.L.1163, No.259), referred
8 to as the Generic Equivalent Drug Law.

9 (ii) Notwithstanding the provisions of the Generic
10 Equivalent Drug Law and the act of August 26, 1971
11 (P.L.351, No.91), known as the State Lottery Law, generic
12 substitutions shall only be dispensed when it is less
13 expensive for the program.

14 (5) Provide for a program of prospective drug
15 utilization review consistent with section 1927(g)(2) of the
16 Social Security Act.

17 (6) Provide for prior authorization consistent with the
18 requirements of section 1927(g)(5) of the Social Security Act
19 and in accordance with regulations of the Office of
20 Administration.

21 (7) Provide for a program of retrospective drug
22 utilization review and education consistent with section
23 1927(g)(2) of the Social Security Act and in accordance with
24 regulations of the Office of Administration to ensure that
25 prescriptions are appropriate, medically necessary and not
26 likely to result in adverse medical results and to educate
27 providers and recipients of pharmacy services through the
28 pharmacy consolidated benefits program and to correct and
29 report misutilization and abuse by licensed prescribers and
30 recipients and provide for fraud and abuse audits,

1 coordinating its activities with the secretary to support
2 compliance with applicable laws and regulations. Pharmacies
3 shall not be denied payments for medications dispensed based
4 upon the results of retrospective drug utilization review or
5 audits, where the medication was dispensed in good faith by
6 the pharmacy without prior knowledge that the prescription of
7 a medication was not appropriate or necessary, was likely to
8 cause adverse medical results or constituted a fraudulent or
9 abusive practice by the prescriber.

10 (8) Establish a program of medication therapy management
11 consistent with section 1860D-4(c)(2) of the Social Security
12 Act.

13 (9) Provide educational materials for program recipients
14 of pharmacy services on disease and care management.

15 (10) In accordance with section 1927(a) through (d) of
16 the Social Security Act or Chapter 7 of the act of August 26,
17 1971 (P.L.351, No.91), known as the State Lottery Law, bill,
18 recoup and relay to the medical assistance program
19 manufacturers' drug rebates and excessive consumer price
20 inflation discounts and resolve disputes. Upon the
21 establishment of the program, all medical assistance
22 recipients shall be enrolled in prescription drug programs
23 for which rebates and discounts are collected pursuant to
24 section 1927(a) through (d) of the Social Security Act.

25 (11) Adjudicate claims through an electronic claims
26 management system consistent with section 1927(h) of the
27 Social Security Act and which allows for an emergency supply
28 of prescribed medication in the event of equipment failures.

29 (12) The Office of Administration shall develop a manual
30 setting forth procedures, guidelines and standards to be

1 utilized by prescription drug plans in audits of providers
2 pertaining to the program.

3 (13) Create a uniform audit and recoupment system
4 subject to the requirements of section 7(c) for all of the
5 following:

6 (i) Pharmacies, pharmacists, dispensing physicians
7 and any other providers under this act.

8 (ii) Pharmaceutical manufacturers, wholesalers and
9 other suppliers of prescription drugs.

10 (14) Provide for the reimbursement of all providers
11 participating in prescription drug programs on a fee-for-
12 service basis.

13 (15) Allow providers certified in medication therapy
14 management by a national accrediting body or by any other
15 certification process approved by the State Board of Pharmacy
16 to provide medication therapy management.

17 (c) Considerations.--In preparing and managing the uniform
18 drug list, the Office of Administration shall enter into
19 agreements with drug manufacturers to collect and remit to the
20 program discounts, rebates or other concessions offered by
21 manufacturers.

22 (d) Advisory committee.--

23 (1) An advisory committee for One Pennsylvania is
24 established to assist the program in making informed and
25 fiscally responsive decisions in administering and
26 consolidating the purchases and reimbursements of
27 pharmaceutical drugs and benefits for the Commonwealth.

28 (2) An advisory committee to the Office of
29 Administration shall consist of the following members:

30 (i) Three members appointed by the Governor.

1 (ii) Two members appointed by each of the following:

2 (A) The President pro tempore of the Senate.

3 (B) The Minority Leader of the Senate.

4 (C) The Speaker of the House of Representatives.

5 (D) The Minority Leader of the House of
6 Representatives.

7 (3) Each legislative appointing authority shall appoint
8 one member pursuant to paragraph (1)(ii) involved in the
9 ownership or operation of independent pharmacies and one
10 member involved in the ownership or operation of chain
11 pharmacies.

12 (4) Members of the committee shall serve without
13 compensation but shall be reimbursed for their reasonable and
14 necessary expenses by the Office of Administration.

15 (5) Members of the committee shall serve for indefinite
16 terms at the will of their respective appointing authorities.

17 (6) Action by the committee shall require a vote by at
18 least seven members.

19 (7) Members of the committee shall annually elect a
20 chairperson.

21 (8) The advisory committee shall meet twice yearly to
22 provide advice and recommendations to the program in regard
23 to its policies and regulations. The advisory committee shall
24 review the audit manual and rebate agreement yearly and
25 develop recommendations to the Office of Administration as
26 needed.

27 Section 4. Reimbursement.

28 (a) General rule.--Reimbursement to providers shall include
29 all of the following:

30 (1) Payment sufficient to reimburse retail pharmacies

1 for the reasonable and necessary costs incurred to purchase
2 drugs.

3 (2) Except to the extent otherwise required by Federal
4 law or regulations, payments to retail pharmacies pursuant to
5 paragraph (1) shall be based upon the average retail pharmacy
6 acquisition cost for a medication without regard to customary
7 prompt pay discounts in the package size most commonly
8 purchased by retail pharmacies as determined by the Office of
9 Administration pursuant to subsection (d), or a provider's
10 actual acquisition cost for a medication, whichever amount is
11 greater.

12 (3) Payment for dispensing costs adequate to cover costs
13 associated with all of the following:

14 (i) Wages and salaries.

15 (ii) Costs to store and secure inventory.

16 (iii) Patient counseling.

17 (iv) Drug utilization review.

18 (v) Licensing fees.

19 (vi) Taxes.

20 (vii) Insurance.

21 (viii) Other direct and indirect costs of operating
22 a pharmacy.

23 (ix) A reasonable profit to generate a return on the
24 investment associated with the costs.

25 (4) During the first year this section is in effect,
26 payments pursuant to paragraph (3) shall be not less than \$10
27 for the dispensing of a single source drug as defined by
28 section 1927(k)(7)(A)(iv) of the Social Security Act or \$15
29 for the dispensing of a multiple-source drug as defined by
30 section 1927(k)(7)(A)(iv) of the Social Security Act.

1 Beginning on January 1 of each subsequent year, payment
2 pursuant to paragraph (3) shall be not less than the prior
3 year's minimum payments as adjusted based upon the annual
4 percentage change in Consumer Price Index for medical care
5 professional services as published by the Bureau of Labor
6 Statistics of the United States Department of Labor for the
7 month of December of the immediately prior year.

8 (5) Additional payment for:

9 (i) Medication therapy management.

10 (ii) Concurrent and retrospective utilization
11 review.

12 (iii) Managing prior authorization requirements.

13 (iv) To the extent authorized by section 9.1 of the
14 Pharmacy Act, implementing drug therapy protocols.

15 (v) Compounding prescriptions.

16 (vi) Preparing specialized packaging for the
17 administration of medications in long-term care
18 facilities.

19 (vii) Preparing medications for intravenous
20 administration.

21 (viii) Other reasonable and necessary pharmacy
22 services.

23 (b) Prompt payment.--Providers shall be paid within 21 days
24 of the Office of Administration's receipt of appropriate
25 substantiation of the transaction. Providers shall be entitled
26 to interest at the rate provided by section 806 of the act of
27 April 9, 1929 (P.L.343, No.176), known as The Fiscal Code, for
28 any payment not made within the 21-day period.

29 (c) Average retail pharmacy acquisition costs.--The Office
30 of Administration shall determine and publicly make available

1 through its Internet website the average retail pharmacy
2 acquisition cost for covered medications pursuant to regulations
3 approved by the advisory committee in a manner consistent with
4 the methodology used by the Congressional Budget Office in its
5 December 26, 2006, report to the Committee on Energy and
6 Commerce of the United States House of Representatives based
7 upon a survey of retail pharmacy wholesale invoices or through
8 the use of commercially available sources of information.
9 Average pharmacy acquisition costs shall be updated weekly.

10 (d) Copayments.--Except for services which are excluded
11 under the Commonwealth's medical assistance program, the Office
12 of Administration may require providers to collect a copayment
13 in an amount set by the program. To the extent a provider is
14 required by Federal or State law to dispense prescriptions to
15 persons unable to satisfy copayment obligations, the provider
16 shall be reimbursed for uncollected copayment amounts. The
17 Office of Administration shall neither require copayments from
18 beneficiaries nor deduct copayment amounts from provider
19 reimbursements for any particular classes of drugs or
20 prescription drug plan recipients to the extent there is good
21 cause to conclude that copayment requirements will result in
22 noncompliance with prescription drug treatment protocols and
23 will increase overall health care costs or result in imminent
24 and substantial risk of harm or injury to recipients or other
25 persons. Except to the extent prohibited by Federal law, the
26 Office of Administration may accept compensation for the purpose
27 of reducing or eliminating copayments from drug manufacturers,
28 distributors, health care plans or other persons or
29 organizations for the purpose of encouraging therapeutically
30 desirable compliance with prescription drug treatment protocols.

1 Section 5. Deposit of funds.

2 A special fund is established in the State Treasury to be
3 known as the Special Pharmaceutical Fund. All moneys
4 appropriated from the State Lottery Fund for PACE operations
5 shall be deposited in the Special Pharmaceutical Fund. All
6 Federal moneys received by the Commonwealth per any
7 pharmaceutical program consolidated into One Pennsylvania under
8 this act shall be deposited in the Special Pharmaceutical Fund.
9 Any moneys appropriated from the General Fund for pharmaceutical
10 purchasing or reimbursement shall be deposited in this fund. All
11 rebates obtained through prudent pharmaceutical purchasing or
12 through rebate agreements shall be deposited.

13 Section 6. Rebate agreement.

14 (a) Required agreements.--Except as provided in subsection
15 (b), the Office of Administration shall not include on the
16 formulary of preferred drug list established pursuant to section
17 3(b)(1) any prescription drug unless the Office of
18 Administration and the pharmaceutical manufacturer have entered
19 into a rebate agreement covering that prescription drug on terms
20 comparable to agreements executed pursuant to section 1927(a),
21 (b), (c) and (d) of the Social Security Act. The rebate
22 agreement shall provide that, unless prohibited by Federal law,
23 the rebate shall be based on the best price and that additional
24 rebates shall be paid if the pharmaceutical manufacturer
25 increases the price of the drug by an amount greater than the
26 increase in the Consumer Price Index for All Urban Consumers.
27 Nothing in this act shall prevent the Office of Administration
28 from negotiating agreements for the payment of additional
29 rebates and discounts for the benefit of the medical assistance
30 program or from entering into rebate and discount agreements for

1 other plans which have been consolidated into the program for
2 greater rebates and discounts than are required pursuant to
3 section 1927(c) of the Social Security Act.

4 (b) Exceptions.--Subsection (a) shall not apply if the
5 availability of the drug is essential to the health of members
6 of the pharmacy consolidated benefits program as determined by
7 the department.

8 (c) Contracts.--Pharmaceutical manufacturers must enter into
9 a rebate agreement with the department to obtain reimbursement
10 for prescription drugs included under this act. The rebate shall
11 be paid by the manufacturer not later than 30 days after the
12 date of receipt of information necessary to calculate the amount
13 of the rebate. The department shall have the authority to levy a
14 15% surcharge penalty on any rebate not in dispute that remains
15 unpaid for 90 or more days.

16 Section 7. Adjudications.

17 Adjudications conducted by the Office of Administration shall
18 be subject to 2 Pa.C.S. Ch. 5 Subch. A (relating to practice and
19 procedure of Commonwealth agencies) and Ch. 7 Subch. A (relating
20 to judicial review of Commonwealth agency action). The Office of
21 Administration shall adopt rules of procedure regarding the
22 conduct of adjudications involving pharmacies consistent with
23 the provisions of 67 Pa.C.S. §§ 1102 (relating to hearings
24 before the bureau), 1103 (relating to supersedeas), 1104
25 (relating to subpoenas) and 1105 (relating to determinations,
26 review, appeal and enforcement).

27 Section 8. Applicability.

28 This act shall apply to the medical assistance program except
29 to the extent the secretary, in consultation with the Secretary
30 of Public Welfare, determines that the application is a

1 violation of Federal law or an existing contractual agreement.
2 Nothing in this act shall supersede or impede an existing
3 contractual agreement. Contractual agreements in effect on the
4 effective date of this section shall not be renewed or extended
5 to the extent inconsistent with the requirements of this act,
6 and the Office of Administration shall promptly enter into
7 negotiations to modify any contractual agreements inconsistent
8 with this act to conform to the requirements of this act.

9 Section 9. Prohibited activities.

10 It shall be unlawful for any individual, partnership or
11 corporation to solicit, receive, offer or pay any kickback,
12 bribe or rebate in cash or in kind from or to any person in
13 connection with the furnishing of services under this act to the
14 same extent as prohibited with respect to Federal health
15 programs by section 1128(b)(1) and (2) of the Social Security
16 Act, subject to the safe harbors from sanctions provided by
17 sections 1877(a)(1) and 1860D-4(e)(6) of the Social Security
18 Act. Violations of this section shall be subject to the
19 sanctions, penalties and remedies under section 1407 of the
20 Public Welfare Code.

21 Section 10. Repeals.

22 (a) Intent.--The General Assembly declares that the repeal
23 under subsection (b) is necessary to effectuate the purposes of
24 this act.

25 (b) Provision.--Section 509 of the act of August 26, 1971
26 (P.L.351, No.91), known as the State Lottery Law, is repealed.

27 (c) General.--All other acts and parts of acts are repealed
28 insofar as they are inconsistent with this act.

29 Section 11. Effective date.

30 This act shall take effect as follows:

1 (1) Sections 3(d), 4(a)(4) and 6 shall take effect
2 immediately.

3 (2) The remainder of this act shall take effect in one
4 year.