

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 201 Session of 2011

INTRODUCED BY RAFFERTY, GREENLEAF, TARTAGLIONE, SCARNATI, PILEGGI, GORDNER, ORIE, FONTANA, KITCHEN, STACK, MENSCH, KASUNIC, TOMLINSON, ERICKSON, BAKER, WAUGH, SMUCKER, PIPPY, ARGALL, ALLOWAY, BOSCOLA, WOZNIAK AND D. WHITE, JANUARY 19, 2011

REFERRED TO BANKING AND INSURANCE, JANUARY 19, 2011

AN ACT

1 Amending the act of May 17, 1921 (P.L.682, No.284), entitled "An
 2 act relating to insurance; amending, revising, and
 3 consolidating the law providing for the incorporation of
 4 insurance companies, and the regulation, supervision, and
 5 protection of home and foreign insurance companies, Lloyds
 6 associations, reciprocal and inter-insurance exchanges, and
 7 fire insurance rating bureaus, and the regulation and
 8 supervision of insurance carried by such companies,
 9 associations, and exchanges, including insurance carried by
 10 the State Workmen's Insurance Fund; providing penalties; and
 11 repealing existing laws," providing for access to community
 12 pharmacy services.

13 The General Assembly of the Commonwealth of Pennsylvania
 14 hereby enacts as follows:

15 Section 1. The act of May 17, 1921 (P.L.682, No.284), known
 16 as The Insurance Company Law of 1921, is amended by adding a
 17 section to read:

18 Section 635.6. Access to Community Pharmacy Services.--(a)
 19 If a pharmacy agrees to participate in a provider network under
 20 subsection (c), no health insurance policy, government program
 21 or pharmacy benefit manager providing coverage or reimbursement

1 for the dispensing of prescription medications may, as a
2 condition for the provision of benefits or for the payment of
3 reimbursement for medications or pharmacy services, do any of
4 the following:

5 (1) Require a covered individual to obtain any prescription
6 medication from a mail order pharmacy.

7 (2) Impose upon a covered individual utilizing a retail
8 community pharmacy any copayment, deductible or other cost-
9 sharing requirement or prior authorization requirement not
10 imposed upon a covered individual utilizing a mail order
11 pharmacy.

12 (3) Subject any medication dispensed by a retail community
13 pharmacy to a covered individual to a minimum or maximum
14 quantity limit, length of script, restriction on refills or
15 requirement to obtain refills not imposed upon a mail order
16 pharmacy.

17 (4) Require a covered individual in whole or in part to pay
18 for any medication dispensed by a retail community pharmacy and
19 seek reimbursement if the individual is not required to pay for
20 and seek reimbursement in the same manner for a prescription
21 dispensed by a mail order pharmacy.

22 (5) Subject a covered individual to any administrative
23 requirement in order to use a retail community pharmacy that is
24 not imposed upon the use of a mail order pharmacy, including a
25 requirement to express an intent or exercise an option to use or
26 not use any particular pharmacy or type of pharmacy as a
27 condition of having a prescription dispensed by a retail
28 community pharmacy.

29 (6) Impose any other term, condition or requirement
30 pertaining to the use of the services of a retail community

1 pharmacy that materially and unreasonably interferes with or
2 impairs the right of a covered individual to obtain prescription
3 medications from a retail community pharmacy of the individual's
4 choice.

5 (b) (1) No health insurance company, agent or contractor of
6 an insurance company, government program or pharmacy benefit
7 manager shall, in the administration of a health insurance
8 policy or a pharmacy provider network, take any action or allow
9 any action to occur that results in actions prohibited under
10 subsection (a).

11 (2) With respect to prescription medications dispensed by a
12 pharmacy eligible to participate in a provider network under
13 subsection (c), information regarding the dispensing of
14 prescription medications by a pharmacy shall not be used by a
15 health insurance company, an agent, affiliate or contractor of
16 an insurance company, a government program or by a prescription
17 benefit manager to promote, advertise or encourage the use of a
18 participating pharmacy, including a mail order pharmacy.

19 (3) Any health insurance company, agent or contractor of an
20 insurance company, or pharmacy benefit manager, or any pharmacy
21 owned or affiliated with a health insurance company or pharmacy
22 benefit manager, receiving rebates, discounts, allowances or
23 other incentive payments from any person for the dispensing of
24 prescription medications shall at least annually file a report
25 fully disclosing the amount, terms and conditions of the
26 payments to the department. The department may review and audit
27 records supporting the accuracy and completeness of the report
28 and shall, not later than ninety (90) days after the receipt of
29 a report, make available to the purchaser of any health
30 insurance policy or employe benefit plan with respect to which

1 the payments where made, and to any pharmacy participating in a
2 network providing benefits to covered individuals receiving
3 benefits from the health insurance policy or employe benefit
4 plan, providing a summary of the amounts, terms and conditions
5 pursuant to which any such payments are made. The summary
6 prepared by the department shall not disclose information in a
7 format that will, with respect to any particular person making
8 the payments or with respect to the terms and conditions of
9 agreements relating to payments received from any particular
10 person, disclose any trade secrets relating to the payments.

11 (c) (1) A pharmacy licensed and in good standing with the
12 State Board of Pharmacy and not disqualified from participation
13 in the Medicaid or Medicare program for cause shall have a right
14 to participate in a pharmacy provider network, if the pharmacy
15 offers to enter into an agreement accepting the standard terms,
16 conditions or requirements relating to dispensing fees, payments
17 for product costs and other pharmacy services and the quality of
18 dispensing and other pharmacy services established by a health
19 insurance company, government program or pharmacy benefit
20 manager for all pharmacies in the provider network.

21 (2) The standard terms and conditions relating to dispensing
22 fees and payment for product costs and other pharmacy services
23 established under paragraph (1) shall provide convenient access
24 to retail community pharmacies consistent with the standards
25 established under section 2121 and shall take into consideration
26 the standards established by the Center for Medicare and
27 Medicaid Services of the United States Department of Health and
28 Human Services under section 1395w-104(b) (1) (c) of the Social
29 Security Act (49 Stat. 620, 42 U.S.C. § 1395w-104(b) (1) (c)).

30 (3) The standard terms and conditions relating to dispensing

1 fees, ingredient costs and payments for pharmacy services
2 provided to retail community pharmacies shall not be less than
3 the amounts paid by or for the benefit of a health insurance
4 company, government program or pharmacy benefit manager for
5 dispensing of the same medications and the provision of
6 comparable services to any mail order pharmacy, including
7 amounts paid or distributed to a mail order pharmacy by an
8 affiliate of the mail order pharmacy or by the pharmacy benefit
9 manager.

10 (4) In determining whether the terms and conditions relating
11 to dispensing fees, ingredient costs and payments for pharmacy
12 services are not less than amounts paid to a mail order pharmacy
13 under paragraph (3), consideration shall be given to the extent
14 practicable to any rebates, discounts, allowances or other
15 incentive payments received for the dispensing of prescription
16 medications by a mail order pharmacy or an affiliate of a mail
17 order pharmacy, including a pharmacy benefit manager, from any
18 person other than amounts that reflect arm's-length payments
19 based on the fair value of services provided in exchange for
20 such payments, or amounts used to reduce the cost of
21 prescription medication benefits paid by the purchaser of a
22 health insurance policy or the services of a prescription drug
23 manager, or by a government program.

24 (5) A pharmacy shall not be deemed to be eligible to
25 participate in a provider network under this subsection during
26 any period of time for which its right to participate in a
27 network has been suspended or revoked for serious violations of
28 a network pharmacy provider agreement established under this
29 subsection that reasonably warrant suspension or revocation.

30 (d) (1) With respect to a health insurance company or

1 pharmacy benefit manager:

2 (i) The department shall review the terms and conditions of
3 pharmacy networks as provided under section 2121, may utilize
4 the enforcement mechanisms, remedies and penalties available
5 under section 628 and may demand the production of any
6 information necessary to enforce this section.

7 (ii) Regardless of whether any enforcement action is taken
8 by the department, a covered individual, pharmacy or pharmacist
9 aggrieved by a violation of this section may seek relief to
10 remedy alleged violations of this section involving at least one
11 level of internal review and investigation as provided under
12 section 2161(b) and an opportunity to appeal to the department
13 in the manner provided under section 2142 unless, with respect
14 to a pharmacy or pharmacist, an agreement with the insurance
15 company or pharmacy benefit manager establishes an alternative
16 dispute resolution process as provided under section 2162(f).

17 (2) A covered individual, pharmacy or pharmacist aggrieved
18 by a violation of this section by a government program may
19 petition the agency responsible for the administration of the
20 program to review complaints regarding violations of this
21 section.

22 (e) It is the intent of the General Assembly that this
23 section and the other provisions of this act relating to health
24 insurance shall, as applied to persons subject to this act to
25 the fullest extent possible, be preserved from preemption by
26 Federal law. If any provisions of this act relating to health
27 insurance are preempted by Federal law or otherwise declared
28 invalid or unenforceable, the remaining provisions of this act
29 shall remain in force and effect.

30 (f) As used in this section:

1 (1) "Covered individual" means an individual receiving
2 prescription medication coverage or reimbursement provided by a
3 health insurance policy, government program or pharmacy benefit
4 manager.

5 (2) "Government program" means any of the following:

6 (i) The Commonwealth's medical assistance program
7 established under the act of June 13, 1967 (P.L.31, No.21),
8 known as the "Public Welfare Code," except that the specialty
9 pharmacy drug program adopted by the Department of Public
10 Welfare may be exempt from the requirements of this section to
11 the extent the Department of Public Welfare, after review and
12 evaluation of the program, determines that the application of
13 the requirements of this section will materially increase the
14 costs of providing specialty pharmacy services.

15 (ii) The adult basic coverage insurance program established
16 under Chapter 13 of the act of June 26, 2001 (P.L.755, No.77),
17 known as the "Tobacco Settlement Act."

18 (iii) The Children's Health Care Program established under
19 Article XXIII.

20 (iv) The program of pharmaceutical assistance for the
21 elderly established under the act of August 26, 1971 (P.L.351,
22 No.91), known as the "State Lottery Law."

23 (v) An employe benefit plan described in section 1003(b)(1)
24 of the Employee Retirement Income Security Act of 1974 (Public
25 Law 93-46, 29 U.S.C. § 1003(b)(1)), applicable to government
26 employees who are residents of this Commonwealth, except that the
27 Pennsylvania Public Employees Benefit Trust Fund may be exempt
28 from the requirements of this section to the extent the Office
29 of Administration, after review and evaluation of the program,
30 and consultation with Commonwealth employe collective bargaining

1 units, determines that the application of the requirements of
2 this section will materially increase the costs of providing
3 pharmacy services.

4 (vi) Any other program established or operated by the
5 Commonwealth that provides or pays for the cost of prescription
6 medications and pharmacy services provided to residents of this
7 Commonwealth.

8 (3) "Health insurance company" means a fraternal benefit
9 society, health maintenance organization, hospital plan
10 corporation, insurer, preferred provider organization or
11 professional health services plan corporation as defined in
12 section 603-B, or other entity subject to this act.

13 (4) "Health insurance policy" means a group or individual
14 health or sickness or accident insurance policy, subscriber
15 contract or certificate issued by a health insurance company
16 providing coverage or benefits for prescription medications to
17 residents of this Commonwealth.

18 (5) "Mail order pharmacy" means a pharmacy that
19 predominantly receives prescriptions by mail, telefax or through
20 electronic submissions and predominantly dispenses the
21 medications to patients through the use of the United States
22 mail or other common or contract carrier delivery service and
23 generally provides consultations with patients electronically
24 rather than face-to-face.

25 (6) "Pharmacy benefit manager" means a person, partnership,
26 association or corporation not holding a certificate of
27 authority under section 630 that establishes, operates,
28 maintains or administers agreements with pharmacies and health
29 insurance companies, government programs or employe benefit
30 plans described in section 1003(a) of the Employee Retirement

1 Income Security Act of 1974 relating to the dispensing of
2 prescription medications and the provision of pharmacy services
3 to covered individuals, including agreements relating to the
4 amounts to be charged by the pharmacy for services rendered,
5 incentives provided to covered individuals to use the services
6 of designated pharmacies, or limitations on reimbursement only
7 when services are provided by designated pharmacies.

8 (7) "Retail community pharmacy" means a pharmacy that is
9 open to the public, serves walk-in customers and makes available
10 face-to-face consultations between licensed pharmacists and
11 persons to whom medications are dispensed.

12 Section 2. The Insurance Department may adopt regulations to
13 administer and enforce section 635.6 of the act.

14 Section 3. Section 635.6 of the act shall apply to health
15 insurance policies, government programs and agreements with
16 pharmacy benefit managers that are offered, issued, executed or
17 renewed or that have provisions related to prescription
18 medication benefits that are amended on or after the effective
19 date of this section.

20 Section 4. This act shall take effect as follows:

21 (1) The following provisions shall take effect in 120
22 days:

23 (i) The addition of section 635.6 of the act.

24 (ii) Section 3 of this act.

25 (2) The remainder of this act shall take effect
26 immediately.