

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 201 Session of 2011

INTRODUCED BY RAFFERTY, GREENLEAF, TARTAGLIONE, SCARNATI, PILEGGI, GORDNER, ORIE, FONTANA, KITCHEN, STACK, KASUNIC, TOMLINSON, ERICKSON, BAKER, WAUGH, SMUCKER, PIPPY, ARGALL, ALLOWAY, BOSCOLA, WOZNIAK, D. WHITE, BRUBAKER, BROWNE, FERLO, DINNIMAN, McILHINNEY, COSTA, SOLOBAY, LEACH AND WARD, JANUARY 19, 2011

SENATOR CORMAN, APPROPRIATIONS, RE-REPORTED AS AMENDED, SEPTEMBER 24, 2012

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 IN HEALTH AND ACCIDENT INSURANCE, PROVIDING
13 FOR COVERAGE OF PRESCRIPTIONS.



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

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

19 ~~Section 635.6. Access to Community Pharmacy Services. (a)~~
20 ~~If a pharmacy agrees to participate in a provider network under~~
21 ~~subsection (c), no health insurance policy, government program~~



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

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

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

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

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

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

30 ~~(6) Impose any other term, condition or requirement~~

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

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

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

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

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

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

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

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

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

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

1 ~~(d) (1) With respect to a health insurance company or~~
2 ~~pharmacy benefit manager:~~

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

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

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

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

1 SECTION 635.6. COVERAGE OF PRESCRIPTIONS.-- (A) A HEALTH ←
2 INSURANCE POLICY OR GOVERNMENT PROGRAM PROVIDING BENEFITS FOR
3 PRESCRIPTIONS SHALL NOT IMPOSE ON A COVERED INDIVIDUAL UTILIZING
4 A RETAIL PHARMACY A COPAYMENT, DEDUCTIBLE, FEE, LIMITATION ON
5 BENEFITS OR OTHER CONDITION OR REQUIREMENT NOT OTHERWISE IMPOSED
6 ON THE COVERED INDIVIDUAL WHEN USING A MAIL ORDER PHARMACY.

7 (B) SUBSECTION (A) SHALL APPLY ONLY IF THE RETAIL PHARMACY
8 IS WILLING TO ACCEPT FROM THE INSURER THE SAME PRICING, TERMS,
9 CONDITIONS OR REQUIREMENTS RELATED TO THE COST OF THE
10 PRESCRIPTIONS AND THE COST AND QUALITY OF DISPENSING
11 PRESCRIPTIONS THAT THE INSURER HAS ESTABLISHED FOR A MAIL ORDER
12 PHARMACY AND ANY OF SUCH PHARMACY'S AFFILIATES, INCLUDING ANY
13 AFFILIATED PHARMACY BENEFIT MANAGER, PURSUANT TO THE HEALTH
14 INSURANCE POLICY.

15 (C) BEGINNING EIGHTEEN MONTHS AFTER THE EFFECTIVE DATE OF
16 THIS SECTION, THE LEGISLATIVE BUDGET AND FINANCE COMMITTEE SHALL
17 CONDUCT AN EVALUATION OF THE IMPACT OF THIS SECTION REGARDING
18 THE ACCESS TO PRESCRIPTION DRUGS AT BOTH INDEPENDENT AND CHAIN
19 RETAIL PHARMACIES AND WHETHER THE PROVISIONS OF THIS SECTION
20 HAVE HAD A MATERIAL POSITIVE OR NEGATIVE IMPACT UPON THE COST OF
21 PRESCRIPTION MEDICATIONS TO CONSUMERS AND HEALTH CARE PLANS AND
22 SHALL ISSUE A REPORT TO THE GENERAL ASSEMBLY WITHIN NINE MONTHS
23 OF THE COMMENCEMENT OF THE STUDY REGARDING ITS FINDINGS AND
24 RECOMMENDATIONS.

25 ~~(f)~~ (D) As used in this section: ←

26 ~~(1) "Covered individual" means an individual receiving~~ ←
27 ~~prescription medication coverage or reimbursement provided by a~~
28 ~~health insurance policy, government program or pharmacy benefit~~
29 ~~manager.~~

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

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

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

13 (iii) The Children's Health Care Program established under
14 Article XXIII.

15 (iv) (III) The program of pharmaceutical assistance for the ←
16 elderly established under CHAPTER 5 OF the act of August 26, ←
17 1971 (P.L.351, No.91), known as the "State Lottery Law."

18 (v) An employe benefit plan described in section 1003(b)(1) ←
19 of the Employee Retirement Income Security Act of 1974 (Public
20 Law 93-46, 29 U.S.C. § 1003(b)(1)), applicable to government
21 employes who are residents of this Commonwealth, except that the
22 Pennsylvania Public Employees Benefit Trust Fund may be exempt
23 from the requirements of this section to the extent the Office
24 of Administration, after review and evaluation of the program,
25 and consultation with Commonwealth employe collective bargaining
26 units, determines that the application of the requirements of
27 this section will materially increase the costs of providing
28 pharmacy services.

29 (vi) Any other program established or operated by the
30 Commonwealth that provides or pays for the cost of prescription

1 ~~medications and pharmacy services provided to residents of this~~
2 ~~Commonwealth.~~

3 ~~(3) "Health insurance company" means a fraternal benefit~~
4 ~~society, health maintenance organization, hospital plan~~
5 ~~corporation, insurer, preferred provider organization or~~
6 ~~professional health services plan corporation as defined in~~
7 ~~section 603 B, or other entity subject to this act.~~

8 ~~(4) "Health insurance policy" means a group or individual~~
9 ~~health or sickness or accident insurance policy, subscriber~~
10 ~~contract or certificate issued by a health insurance company~~
11 ~~providing coverage or benefits for prescription medications to~~
12 ~~residents of this Commonwealth.~~

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

20 ~~(6) "Pharmacy benefit manager" means a person, partnership,~~
21 ~~association or corporation not holding a certificate of~~
22 ~~authority under section 630 that establishes, operates,~~
23 ~~maintains or administers agreements with pharmacies and health~~
24 ~~insurance companies, government programs or employe benefit~~
25 ~~plans described in section 1003(a) of the Employee Retirement~~
26 ~~Income Security Act of 1974 relating to the dispensing of~~
27 ~~prescription medications and the provision of pharmacy services~~
28 ~~to covered individuals, including agreements relating to the~~
29 ~~amounts to be charged by the pharmacy for services rendered,~~
30 ~~incentives provided to covered individuals to use the services~~

1 ~~of designated pharmacies, or limitations on reimbursement only~~
2 ~~when services are provided by designated pharmacies.~~

3 ~~(7) "Retail community pharmacy" means a pharmacy that is~~
4 ~~open to the public, serves walk in customers and makes available~~
5 ~~face to face consultations between licensed pharmacists and~~
6 ~~persons to whom medications are dispensed.~~

7 ~~Section 2. The Insurance Department may adopt regulations to~~
8 ~~administer and enforce section 635.6 of the act.~~

9 ~~Section 3. Section 635.6 of the act shall apply to health~~
10 ~~insurance policies, government programs and agreements with~~
11 ~~pharmacy benefit managers that are offered, issued, executed or~~
12 ~~renewed or that have provisions related to prescription~~
13 ~~medication benefits that are amended on or after the effective~~
14 ~~date of this section.~~

15 ~~Section 4. This act shall take effect as follows:~~

16 ~~(1) The following provisions shall take effect in 120-~~
17 ~~days:~~

18 ~~(i) The addition of section 635.6 of the act.~~

19 ~~(ii) Section 3 of this act.~~

20 ~~(2) The remainder of this act shall take effect~~
21 ~~immediately.~~

22 (2) "HEALTH INSURANCE POLICY" MEANS A GROUP OR INDIVIDUAL ←
23 HEALTH OR SICKNESS OR ACCIDENT INSURANCE POLICY, SUBSCRIBER
24 CONTRACT OR CERTIFICATE ISSUED BY AN ENTITY SUBJECT TO ANY ONE
25 OF THE FOLLOWING:

26 (I) THIS ACT.

27 (II) THE ACT OF DECEMBER 29, 1972 (P.L.1701, NO.364), KNOWN
28 AS THE "HEALTH MAINTENANCE ORGANIZATION ACT."

29 (III) 40 PA.C.S. CH. 61 (RELATING TO HOSPITAL PLAN
30 CORPORATIONS) OR 63 (RELATING TO PROFESSIONAL HEALTH SERVICES

1 PLAN CORPORATIONS).
2 THE TERM DOES NOT INCLUDE ACCIDENT ONLY, FIXED INDEMNITY,
3 LIMITED BENEFIT, CREDIT, DENTAL, VISION, SPECIFIED DISEASE,
4 MEDICARE SUPPLEMENT, CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE
5 UNIFORMED SERVICES (CHAMPUS) SUPPLEMENT, LONG-TERM CARE OR
6 DISABILITY INCOME, WORKERS' COMPENSATION OR AUTOMOBILE MEDICAL
7 PAYMENT INSURANCE.

8 (3) "INSURER" MEANS ANY ENTITY THAT ISSUES A GROUP OR
9 INDIVIDUAL HEALTH, SICKNESS OR ACCIDENT POLICY OR SUBSCRIBER
10 CONTRACT DESCRIBED UNDER PARAGRAPH (2).

11 (4) "MAIL ORDER PHARMACY" MEANS A PHARMACY AS DEFINED IN THE
12 ACT OF SEPTEMBER 27, 1961 (P.L.1700, NO.699), KNOWN AS THE
13 "PHARMACY ACT," WHERE PRESCRIPTIONS ARE DISPENSED TO COVERED
14 INDIVIDUALS VIA THE MAIL.

15 (5) "PRESCRIPTION" AND "DISPENSING" MEAN THOSE TERMS AS
16 DEFINED IN THE ACT OF SEPTEMBER 27, 1961 (P.L.1700, NO.699),
17 KNOWN AS THE "PHARMACY ACT."

18 (6) "RETAIL PHARMACY" MEANS A PHARMACY AS DEFINED IN THE ACT
19 OF SEPTEMBER 27, 1961 (P.L.1700, NO.699), KNOWN AS THE "PHARMACY
20 ACT," WHERE PRESCRIPTIONS ARE ABLE TO BE DISPENSED TO COVERED
21 INDIVIDUALS ON THE PREMISES OF SUCH PHARMACY.

22 SECTION 2. THIS ACT SHALL APPLY TO ALL HEALTH INSURANCE
23 POLICIES AND GOVERNMENT PLANS ISSUED OR RENEWED ON OR AFTER THE
24 EFFECTIVE DATE OF THIS SECTION.

25 SECTION 3. THIS ACT SHALL TAKE EFFECT IN 120 DAYS.