
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 947 Session of
2015

INTRODUCED BY FABRIZIO, BAKER, D. COSTA, V. BROWN, STAATS,
LONGIETTI, DAVIS, GIBBONS, PICKETT, PASHINSKI, CRUZ, GROVE,
McNEILL, YOUNGBLOOD, M. K. KELLER, KILLION, P. COSTA, COHEN,
THOMAS, EVERETT, CARROLL, FARRY, SCHLOSSBERG, PHILLIPS-HILL,
M. DALEY, WARD, READSHAW, HARKINS, MURT, SAYLOR, GOODMAN,
GALLOWAY, BARRAR, BOYLE, MICCARELLI, DeLUCA, NEUMAN, MATZIE,
TOEPEL, WATSON AND KNOWLES, AUGUST 18, 2015

REFERRED TO COMMITTEE ON HEALTH, AUGUST 18, 2015

AN ACT

1 Providing for registration of pharmacy benefits managers and for
2 maximum allowable cost transparency.

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
7 Pharmaceutical Transparency 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 individual." A member, participant, enrollee,
13 contract holder or policyholder or beneficiary of a covered
14 entity who is provided health coverage by the covered entity.
15 The term includes a dependent or other person provided health

1 coverage through the policy, contract or plan of a covered
2 individual.

3 "Covered entity." A member, participant, enrollee, contract
4 holder or policy holder covered by a contract administered by a
5 pharmacy benefit manager.

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

7 "Maximum allowable cost." The maximum amount that a pharmacy
8 benefits manager will reimburse a pharmacy for the cost of a
9 drug or a medical product or device.

10 "Maximum allowable cost list." A list of drugs, medical
11 products or devices, or both, for which a maximum allowable cost
12 has been established by a pharmacy benefits manager.

13 "Multiple source drug." A covered outpatient drug for which
14 there is at least one other drug product that is rated as
15 therapeutically equivalent under the Food and Drug
16 Administration's most recent publication of "Approved Drug
17 Products with Therapeutic Equivalence Evaluations."

18 "Network." A pharmacy or group of pharmacies that agree to
19 provide prescription services to covered individuals on behalf
20 of a covered entity or group of covered entities in exchange for
21 payment for its services by a pharmacy benefits manager or
22 pharmacy services administration organization. The term includes
23 a pharmacy that generally dispenses outpatient prescriptions to
24 covered individuals or dispenses particular types of
25 prescriptions, provides pharmacy services to particular types of
26 covered individuals or dispenses prescriptions in particular
27 health care settings, including networks of specialty,
28 institutional or long-term care facilities.

29 "Pharmacy." As defined in section 2(12) of the act of
30 September 27, 1961 (P.L.1700, No.699), known as the Pharmacy

1 Act.

2 "Pharmacy benefits manager" or "PBM." A person, business or
3 other entity that performs pharmacy benefits management.

4 "Pharmacy benefits management." Performing any of the
5 following:

6 (1) The procurement of prescription drugs at a
7 negotiated contracted rate for dispensation within this
8 Commonwealth to covered individuals.

9 (2) The administration or management of prescription
10 drug benefits provided by a covered entity for the benefit of
11 covered individuals.

12 (3) The provision of any of the following services in
13 conjunction with the administration of pharmacy benefits:

14 (i) Mail-service pharmacy.

15 (ii) Claims processing.

16 (iii) Retail network management.

17 (iv) Payment of claims to pharmacies for
18 prescription drugs dispensed to covered individuals via
19 retail or mail-order pharmacy.

20 (v) Clinical formulary development and management
21 services, including, but not limited to, utilization
22 management and quality assurance programs.

23 (vi) Rebate contracting and administration.

24 (vii) Certain patient compliance, therapeutic
25 intervention and generic substitution programs.

26 (viii) Disease management programs.

27 (ix) Setting pharmacy reimbursement pricing and
28 methodologies, including maximum allowable cost, and
29 determining single or multiple source drugs.

30 "Pharmacy Services Administration Organization" or "PSAO."

1 Any entity that contracts with pharmacies to assist with third-
2 party payer interactions and can provide a variety of other
3 administrative services. The administrative services vary but
4 may include contracting with PBMs on behalf of pharmacies and
5 managing pharmacies' claims payments from third-party payers.

6 Section 3. PBM registration.

7 (a) General rule.--To conduct business in this Commonwealth,
8 a PBM must register with the department annually by:

9 (1) Submitting the registration form prescribed under
10 subsection (c).

11 (2) Paying a registration fee promulgated by the
12 department.

13 (b) Registration renewal.--The department shall prescribe
14 rules for the annual renewal of a PBM registration, and the
15 following shall apply:

16 (1) A PBM shall pay a renewal fee adopted by the
17 department.

18 (2) Any lapse in registration under this section shall
19 be subject to penalties or late fees, or both, as established
20 by the department.

21 (c) Registration form.--The department shall develop a
22 registration form, which a PBM shall submit to the department.
23 The form must contain the following information, along with any
24 additional requirements as may be established by the department:

25 (1) The identity, address and telephone number of the
26 PBM.

27 (2) The name, business address and telephone number of
28 the contact person for the PBM.

29 (3) When applicable, the Federal employer identification
30 number for the PBM.

1 (4) For a PBM that maintains a mail-order pharmacy that
2 ships or mails prescription drugs to residents of this
3 Commonwealth, the identity, business address and telephone
4 number of the licensed pharmacist in charge and the license
5 number of any mail-order pharmacy owned by the PBM to the
6 department.

7 (d) Inspection.--The department may conduct announced or
8 unannounced random inspections annually of a licensed PBM, which
9 shall encompass the following:

10 (1) The operation of the PBM.

11 (2) Review of records as selected by the department.

12 (3) Adherence to other requirements of this act.

13 (e) Revocation, suspension, denial or restriction.--The
14 department may revoke, suspend, deny or restrict registration of
15 a PBM for violation of this section or on other grounds or
16 violations of Federal or State laws or regulations as determined
17 necessary or appropriate by the department.

18 Section 4. Maximum allowable cost list and reimbursement.

19 (a) General rule.--Before a PBM places a drug on a maximum
20 allowable cost list, the PBM must ensure that:

21 (1) the drug is listed as "A" or "AB" rated in the most
22 recent version of the Food and Drug Administration's
23 "Approved Drug Products with Therapeutic Equivalence
24 Evaluations" or is an authorized generic;

25 (2) two or more therapeutically equivalent, multiple
26 source drugs or authorized generics available for purchase by
27 network retail pharmacies from wholesalers servicing this
28 Commonwealth; and

29 (3) dispensing fees are not included in the calculation
30 of maximum allowable cost price reimbursement to pharmacy

1 providers.

2 (b) Removal from listing.--If a drug that has been placed on
3 a maximum allowable cost list no longer meets the requirements
4 of subsection (a), the drug shall be removed from the maximum
5 allowable cost list by the PBM within seven business days after
6 the date that the PBM becomes aware that the drug no longer
7 meets the requirements of subsection (a).

8 Section 5. Availability of the maximum allowable cost list.

9 Upon each contract execution or renewal, a PBM shall make
10 available, with respect to contracts between a PBM and a
11 pharmacy, or alternatively, a PBM and a pharmacy's contracting
12 representative or agent such as PSAO, the following:

13 (1) The criteria used to determine the maximum allowable
14 costs for the drugs and medical products and devices on each
15 maximum allowable cost list.

16 (2) The current maximum allowable cost list used by that
17 PBM for covered individuals served by that contracted
18 pharmacy.

19 (3) Upon request, every maximum allowable cost list used
20 by that PBM for covered individuals served by that contracted
21 pharmacy.

22 (4) In the event there are multiple lists under the same
23 contract, the contract shall identify which maximum allowable
24 cost lists are appropriately applicable.

25 Section 6. Updating maximum allowable cost list.

26 A PBM shall:

27 (1) Update each maximum allowable cost list at least
28 once every seven business days.

29 (2) Make the updated lists available to every pharmacy
30 with which the PBM has a contract, directly or through a

1 PSAO, in a readily accessible, secure and usable publicly
2 accessible Internet website or other comparable format or
3 process.

4 (3) Utilize the updated maximum allowable costs to
5 calculate the payments made to the contracted pharmacies
6 within three business days.

7 (4) A PBM shall provide a contractual commitment to
8 deliver a particular average reimbursement rate for generics.
9 The average reimbursement rate for generics shall be
10 calculated using the actual amount paid to the pharmacy,
11 excluding the dispensing fee, and shall not be calculated
12 solely according to the amount allowed by the plan and shall
13 include all generics dispensed, regardless of whether they
14 are subject to maximum allowable cost pricing. The contract
15 shall set forth the types of claims to be excluded from the
16 methodologies to be used in the calculation of the average
17 reimbursement rate.

18 (5) Maintain a procedure to eliminate products from the
19 list of drugs subject to such pricing or modify maximum
20 allowable cost rates within seven business days when such
21 drugs do not meet the standards and requirements of this act
22 as set forth in order to remain consistent with pricing
23 changes in the marketplace.

24 Section 7. Maximum allowable cost appeals process.

25 (a) Process to be established.--All contracts between a
26 pharmacy and a PBM or a pharmacy contracted directly with a
27 contracting representative or agent such as a PSAO shall include
28 a process to appeal, investigate and resolve disputes regarding
29 the listed maximum allowable cost for a particular drug or
30 medical device. The process shall be made available on the PBM's

1 publicly accessible Internet website and contain information
2 about the appeals process, including, but not limited to, a
3 telephone number or process that a pharmacy may use to submit
4 maximum allowable cost appeals.

5 (b) Grounds.--A pharmacy may base an appeal on either of the
6 following:

7 (1) the maximum allowable cost established for a
8 particular drug or medical product or device is below cost at
9 which the drug is available for purchase by that pharmacy in
10 this Commonwealth from national or regional wholesalers; or

11 (2) the PBM has placed a drug on the list in violation
12 of section 4.

13 (c) Time period for filing.--The right to appeal shall be
14 limited to 30 days following the reimbursement for a drug by a
15 PBM.

16 (d) Determination.--A PBM shall make a final determination
17 within seven business days of receiving an appeal and shall
18 notify the appealing party of the determination.

19 (e) Denial.--If a PBM denies an appeal, the PBM shall state
20 the reason for the denial and provide the national drug code of
21 an equivalent drug that is available for purchase by network
22 retail pharmacies in the Commonwealth from wholesalers at a
23 price that is equal to or less than the maximum cost for that
24 drug.

25 (f) Filing of grievance.--A pharmacy may file a grievance
26 with the department should a disagreement over denial between a
27 PBM and a pharmacy occur. The department shall investigate the
28 grievance and report its findings to the pharmacy within 30
29 business days.

30 (g) Approval.--If a PBM grants an appeal, the PBM shall

1 adjust the maximum allowable cost of the drug for the appealing
2 pharmacy, along with all network pharmacies. The adjustment
3 shall be paid to the pharmacy within one business day of the
4 determination. The PBM shall notify all similarly situated
5 network pharmacy providers as defined by the plan sponsor.

6 Section 8. Enforcement.

7 (a) Action by the department.--The department shall enforce
8 the provisions of this act and shall take action or impose
9 penalties to bring noncomplying entities into full compliance
10 with this act.

11 (b) Violation of Unfair Trade Practices and Consumer
12 Protection Law.--A violation of this act shall constitute a
13 violation of the act of December 17, 1968 (P.L.1224, No.387),
14 known as the Unfair Trade Practices and Consumer Protection Law.

15 (c) Financial penalties.--A violation of this act may
16 subject the PBM to financial penalties as determined by the
17 department. Additionally, the department may subject a pharmacy
18 to financial penalties if the department finds the pharmacy has
19 engaged in conduct that would constitute an abuse of the appeal
20 process.

21 Section 9. Department authority.

22 The department shall promulgate regulations necessary to
23 implement the provisions of this act.

24 Section 10. Effective date.

25 This act shall take effect in 90 days.