PRINTER'S NO. 3340

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2069 Session of 2015

INTRODUCED BY FARRY, SAMUELSON, HENNESSEY, GROVE, YOUNGBLOOD, BARRAR, COOK-ARTIS, V. BROWN, DeLUCA, BAKER, GALLOWAY, WATSON, FREEMAN, DRISCOLL, QUIGLEY, GODSHALL, D. MILLER, PHILLIPS-HILL, ROZZI, SAINATO, BULLOCK, MILLARD, SCHLOSSBERG, STAATS, DiGIROLAMO AND GIBBONS, MAY 12, 2016

REFERRED TO COMMITTEE ON AGING AND OLDER ADULT SERVICES, MAY 12, 2016

AN ACT

Amending the act of August 26, 1971 (P.L.351, No.91), entitled "An act providing for a State Lottery and administration thereof; authorizing the creation of a State Lottery Commission; prescribing its powers and duties; disposition of funds; violations and penalties therefor; exemption of prizes from State and local taxation and making an appropriation," in pharmaceutical assistance for the elderly, further providing for definitions, for program generally and for generic drugs, providing for medication synchronization, further providing for the Pharmaceutical Assistance Contract for the Elderly Needs Enhancement Tier (PACENET) and for board and providing for medication therapy management.

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

Section 1. The definition of "board" in section 502 of the act of August 26, 1971 (P.L.351, No.91), known as the State Lottery Law, added November 21, 1996 (P.L.741, No.134), is amended and the section is amended by adding definitions to read:

Section 502. Definitions.

The following words and phrases when used in this chapter

shall have the meanings given to them in this section unless the context clearly indicates otherwise:

* * *

"Board." The Pharmaceutical Assistance [Review] Advisory Board.

* * *

"Medication synchronization." The coordination of prescription drug filling or refilling by a pharmacy or dispensing physician for a program participant taking two or more medications for the purpose of improving medication adherence.

"NADAC per unit." The current National Average Drug Acquisition Cost per unit.

* * *

"Wholesale acquisition cost." The cost of a dispensed drug based upon the price published in a national drug pricing system in current use by the Department of Aging as the wholesale acquisition cost of a prescription drug in the most common package size.

Section 2. Section 509(6) of the act, amended July 7, 2006 (P.L.1061, No.111), is amended and the section is amended by adding a paragraph to read:

Section 509. Program generally.

The program shall include the following:

* * *

[(6) The program payment shall be the lower of the following amounts determined as follows:

(i) 88% of the average wholesale cost of the prescription drug dispensed:

(A) with the addition of a dispensing fee of the

greater of:

(I) $4 per prescription; or

(II) the amount set by the department by regulation;

(B) the subtraction of the copayment; and

(C) if required, the subtraction of the generic differential; or

(ii) the pharmacy's usual charge for the drug dispensed with the subtraction of the copayment and, if required, the subtraction of the generic differential; or

(iii) if a generic drug, the most current Federal upper payment limits established in the Medicaid Program under 42 CFR § 447.332 (relating to upper limits for multiple source drugs), plus a dispensing fee of $4 or the amount set by the department by regulation, whichever is greater minus the copayment. The department shall update the average wholesale costs and the Federal upper payment limits at least every 30 days.]

(6.1) If the NADAC per unit is available, the program payment shall be the lower of the following amounts:

(i) the NADAC per unit:

(A) with the addition of a professional dispensing fee of thirteen dollars per prescription; and

(B) the subtraction of the copayment; or

(ii) the pharmacy's usual and customary charge for the drug dispensed with the subtraction of the copayment.

(6.2) If the NADAC per unit is unavailable, the program payment shall be the lower of the following amounts:

(i) the wholesale acquisition cost plus 3.2%:

(A) with the addition of a professional dispensing fee of thirteen dollars per prescription; and

(B) the subtraction of the copayment; or

(iii) the pharmacy's usual and customary charge for the drug dispensed with the subtraction of the copayment.

* * *

Section 3. Section 510(a) and (b) of the act, amended July 7, 2006 (P.L.1061, No.111), are amended to read:

Section 510. Generic drugs.

(a) In general.--Notwithstanding any other statute or regulation, a brand name product shall be dispensed and not substituted with an A-rated generic therapeutically equivalent drug if it is less expensive to the program. If a less expensive A-rated generic therapeutically equivalent drug is available for dispensing to a claimant, the provider shall dispense the A-rated generic therapeutically equivalent drug to the claimant. The department shall reimburse providers based upon the most current listing of [Federal upper payment limits established in the Medicaid Program under 42 CFR § 447.332 (relating to upper limits for multiple source drugs), plus a dispensing fee as set forth in section 509(6). The department shall update the average wholesale costs and the Federal upper payment limits on a regular basis, at least every 30 days.] the NADAC per unit plus a professional dispensing fee of $13 per prescription. The department shall not reimburse providers for brand name products except in the following circumstances:

(1) There is no A-rated generic therapeutically equivalent drug available on the market. This paragraph does not apply to the lack of availability of an A-rated generic

therapeutically equivalent drug in the providing pharmacy unless it can be shown to the department that the provider made reasonable attempts to obtain the A-rated generic therapeutically equivalent drug or that there was an unforeseeable demand and depletion of the supply of the A-rated generic therapeutically equivalent drug. In either case, the department shall reimburse the provider for [88% of the average wholesale cost] the NADAC per unit plus a professional dispensing fee [based on the least expensive A-rated generic therapeutically equivalent drug for the brand drug dispensed] of $13 per prescription.

(2) An A-rated generic therapeutically equivalent drug is deemed by the department, in consultation with a utilization review committee, to have too narrow a therapeutic index for safe and effective dispensing in the community setting. The department shall notify providing pharmacies of A-rated generic therapeutically equivalent drugs that are identified pursuant to this paragraph on a regular basis.

(3) The Department of Health has determined that a drug shall not be recognized as an A-rated generic therapeutically equivalent drug for purpose of substitution under section 5(b) of the act of November 24, 1976 (P.L.1163, No.259), referred to as the Generic Equivalent Drug Law.

(4) At the time of dispensing, the provider has a prescription on which the brand name drug dispensed is billed to the program by the provider at a usual and customary charge which is equal to or less than the least expensive usual and customary charge of any A-rated generic therapeutically equivalent drug reasonably available on the

market to the provider.

(5) The brand name drug is less expensive to the program.

(b) Generic not accepted.--If a claimant chooses not to accept the A-rated generic therapeutically equivalent drug required by subsection (a), the claimant shall be liable for the copayment and [70% of the average wholesale cost of the brand name drug] the NADAC per unit.

* * *

Section 4. The act is amended by adding a section to read:

Section 515.1. Medication synchronization.

(a) Prorated daily cost-sharing rate.--The program shall permit and apply a prorated daily cost-sharing rate to prescription drugs that are dispensed by a pharmacy for less than a 30 days' supply if the pharmacist or prescriber determines the fill or refill to be in the best interest of the program participant and the program participant requests or agrees to less than a 30 days' supply for the purpose of medication synchronization.

(b) Denial of coverage prohibited.--

(1) The program may not deny coverage of a prescription drug that is made in accordance with a plan among the health plan, individual beneficiary or group plan, a practitioner and a pharmacist for the purpose of medication synchronization.

(2) The program shall allow a pharmacy to override any denial codes indicating that a prescription drug is being refilled too soon for the purposes of medication synchronization.

(c) Certain payment structures prohibited.--

(1) The program may not use payment structures incorporating prorated dispensing fees.

(2) Dispensing fees for partially filled or refilled prescriptions shall be paid in full for each prescription drug dispensed, regardless of any prorated copayment for the program participant or fee paid for alignment services.

Section 5. Section 519(b) of the act, amended July 7, 2006 (P.L.1061, No.111), is amended to read:

Section 519. The Pharmaceutical Assistance Contract for the Elderly Needs Enhancement Tier.

* * *

(b) PACENET eligibility.--A person with an annual income of not less than $14,500 and not more than [$23,500] $31,000 in the case of a single person and of not less than $17,700 and not more than [$31,500] $41,000 in the case of the combined income of persons married to each other shall be eligible for enhanced pharmaceutical assistance under this section. A person may, in reporting income to the department, round the amount of each source of income and the income total to the nearest whole dollar, whereby any amount which is less than 50¢ is eliminated.

* * *

Section 6. Section 520 of the act, amended or added November 21, 1996 (P.L.741, No.134) and November 26, 2003 (P.L.212, No.37), is amended to read:

Section 520. Board.

(a) Establishment.--The Pharmaceutical Assistance [Review] Advisory Board is continued to ensure that the program is providing and continues to provide the assistance intended in a fiscally responsible manner without excessively hampering the pharmaceutical industry.

(b) Composition.--The board shall be comprised of the following [eight] persons:

(1) The Secretary of Aging, who shall serve as its chairman.

(2) The Secretary of Revenue.

(3) The Secretary of Health.

(4) [Five] Nine public members[, one appointed by the President pro tempore of the Senate, one appointed by the Minority Leader of the Senate, one appointed by the Speaker of the House of Representatives, one appointed by the Minority Leader of the House of Representatives and one appointed by the Governor. Those appointed by the legislative officers shall include two senior citizens who have not been a part of the pharmaceutical industry to serve as consumer advocates, one representative of the pharmaceutical industry and one practicing Pennsylvania pharmacist. The individual appointed by the Governor must be a physician. A public member who misses two consecutive meetings without good cause acceptable to the chairman shall be replaced by the appointing authority.] appointed as follows:

(i) Four practicing Pennsylvania pharmacists whose names are jointly submitted by the Pennsylvania Pharmacists Association and the Pennsylvania Association of Chain Drug Stores and then appointed by the following:

(A) One member appointed by the President pro tempore of the Senate.

(B) one member appointed by the Minority Leader of the Senate.

(C) One member appointed by the Speaker of the House of Representatives.

(D) One member appointed by the Minority Leader of the House of Representatives.

(ii) Five individuals appointed by the Governor which include the following:

(A) One representative from the pharmaceutical industry.

(B) Four senior citizens who have not been a part of the pharmaceutical industry, two of whom may be senior advocates.

(5) Should a board vacancy not be filled by the appointing authority within 60 days, the power to appoint an individual to the vacancy shall be given to the Secretary of Aging.

(c) Review.--Using the annual report submitted by the department pursuant to section 2102 and other appropriate data sources, the board shall conduct an annual review. The board shall develop recommendations concerning any changes in the level of copayment, deductible or in the level of fees paid to participating pharmacists. The board shall review the department's therapeutic drug utilization review program on an ongoing basis. The board may also recommend other changes in the structure of the program and direct the department to enter into discussions with the private contractor concerning amendments to the contract, or the department may enter into such discussion if it deems necessary. The copayment or deductible schedule shall only be adjusted on an annual basis.

(c.1) Powers and duties.--The board shall advise on the following:

(1) The development and implementation of the department proposals for medication synchronization and medication

therapy management programs and reimbursement methodologies.

(2) Adjustment of the dispensing fee, as needed.

(3) Cost-of-living adjustment increases for medication synchronization, medication therapy management and the dispensing fee.

(d) Meetings.--The board shall meet at least two times per year and not more than four times per year.

Section 7. The act is amended by adding a section to read:

Section 522.1. Medication therapy management.

PACE shall, in consultation with the board, develop a proposal for a medication therapy management program by using retail community pharmacies enrolled in the program. PACE, in consultation with the board, shall submit the proposal to the General Assembly no later than one year after the effective date of this section.

Section 8. This act shall take effect immediately.