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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 1166 Session of  
2018

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INTRODUCED BY EICHELBERGER, ARGALL, RAFFERTY, VULAKOVICH AND  
BROWNE, MAY 18, 2018

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REFERRED TO BANKING AND INSURANCE, MAY 18, 2018

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AN ACT

1 Amending the act of November 21, 2016 (P.L.1318, No.169),  
2 entitled, "An act providing for pharmacy audit procedures,  
3 for registration of pharmacy benefits managers and auditing  
4 entities, for maximum allowable cost transparency and for  
5 prescription drugs reimbursed under the PACE and PACENET  
6 program; and making related repeals," adding provisions  
7 relating to public contracting for pharmacy benefits  
8 management.

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

11 Section 1. The act of November 21, 2016 (P.L.1318, No.169),  
12 known as the Pharmacy Audit Integrity and Transparency Act, is  
13 amended by adding a chapter to read:

14 CHAPTER 6

15 PUBLIC CONTRACTING FOR

16 PHARMACY BENEFITS MANAGEMENT

17 Section 601. Application of chapter.

18 The provisions of this chapter shall apply to all public  
19 contracts for pharmacy benefits manager services entered into by  
20 a public contracting entity, and to each request for proposals  
21 or invitations for bids, auctions or other solicitations for

1 pharmacy benefits management services on behalf of public  
2 employees that occur after the effective date of this section.  
3 Section 602. Definitions.

4 The following words and phrases when used in this chapter  
5 shall have the meanings given to them in this section unless the  
6 context clearly indicates otherwise:

7 "Copayment." An amount a public employee is required to pay  
8 at a point of sale in order to receive a covered prescription  
9 drug.

10 "Public contracting entity." A government entity authorized  
11 to contract for pharmacy benefits manager services on behalf of  
12 public employees.

13 "Public employee." A person employed, elected or appointed  
14 to serve in a department, authority, commission, committee,  
15 consortium, board, bureau, division or agency of the executive,  
16 legislative or judicial branch of this Commonwealth, including  
17 an independent agency or a public school, political subdivision  
18 or municipal authority of this Commonwealth and a person retired  
19 from such service and enrolled in a drug plan for retired public  
20 employees.

21 "Public pharmacy benefits management contract." A contract  
22 between a public contracting entity and a pharmacy benefits  
23 manager for pharmacy benefits management services.

24 "Reverse auction." A purchasing strategy that uses  
25 specialized software or an online marketplace and enables  
26 suppliers to compete online in real-time by offering a contract  
27 out for bid over a period of time and by allowing multiple  
28 providers to offer ongoing bids on the contract while meeting  
29 all of the specifications until the time period for bidding  
30 expires.

1 Section 603. Solicitation of pharmacy benefits management  
2 contracts.

3 (a) Method of solicitation.--

4 (1) A public contracting entity, prior to soliciting an  
5 invitation of bids or request for proposals for pharmacy  
6 benefits management services shall first consider best  
7 practices, technologies and methodologies, including reverse  
8 auctions and electronic claim review, to maximize  
9 transparency in both contracting and contract implementation.

10 (2) A public contracting entity may use technology  
11 platforms that:

12 (i) Reprice PBM proposals for pharmacy spending  
13 utilizing code-based classification of drugs from  
14 nationally accepted data sources of comparisons of the  
15 costs of PBM proposals.

16 (ii) Conduct real-time, electronic, line-by-line,  
17 claim-by-claim review of invoiced PBM pharmacy claims  
18 using an automated claims adjudication technology  
19 platform that allows for online comparison of PBM  
20 invoices and auditing of other aspects of the services  
21 provided by the PBM.

22 (3) A public contracting entity may procure the  
23 technical assistance necessary during the solicitation  
24 process to evaluate the qualifications of bidders and to  
25 conduct online automated reverse auction services to support  
26 the comparisons for the procurement of pharmacy benefits  
27 management services.

28 (b) Certification to department.--Within 30 days of entering  
29 into or renewing a contract for pharmacy benefits management  
30 services, a public contracting entity shall provide a

1 certification to the department that the public contracting  
2 entity complied with subsection (a) (1). The certification shall  
3 include the technologies employed and the cost or anticipated  
4 cost savings thereof.

5 (c) Transparency in solicitation.--An entity that seeks to  
6 provide pharmacy benefits management services to a public  
7 contracting entity shall provide the following information to  
8 the public contracting entity:

9 (1) The formulary, information on deductions and other  
10 out-of-pocket costs and any administrative requirement,  
11 including preauthorization requirement.

12 (2) Any reimbursement difference, otherwise known as  
13 spread pricing, for the same drug between a retail pharmacy  
14 network and mail order service.

15 (3) Any financial incentive, such as rebate, refund,  
16 purchase order discount or administrative fee the PBM expects  
17 to receive from a manufacturer or wholesaler.

18 (4) The procedure to be used in determining when a drug  
19 has moved from brand to generic.

20 Section 604. Public pharmacy benefits management contracts.

21 (a) Prohibited provisions.--

22 (1) (i) No public pharmacy benefits management contract  
23 may prohibit a pharmacy from disclosing lower-cost  
24 prescription drug options to a covered public employee,  
25 including those that are available if the covered public  
26 employee would purchase the prescription drug without  
27 using the covered public employee's health insurance  
28 coverage.

29 (ii) If information related to a public employee  
30 enrollee's out-of-pocket cost or the clinical efficacy of

1 a prescription drug or alternative medication is  
2 available to a pharmacy provider, no pharmacy benefits  
3 manager contract may provide penalties to a pharmacy  
4 provider for providing the information to a public  
5 employee enrollee.

6 (2) No public pharmacy benefits management contract may  
7 impose on a public employee a copayment for a prescription  
8 drug benefit in an amount that exceeds the cost of the  
9 prescription drug that the pharmacy would charge to persons  
10 who do not purchase the prescription drug through their  
11 health insurance coverage.

12 (b) Required provisions.--

13 (1) A public benefits management contract shall prohibit  
14 the pharmacy benefits manager from suspending the processing  
15 of further refunds during a solicitation process undertaken  
16 to replace or renew the contract.

17 (2) A public pharmacy benefits management contract shall  
18 allow the public contracting entity to make the choice as to  
19 an auditor assigned to validate the financial guarantees  
20 specified in the contract.

21 (3) A public pharmacy benefits management contract shall  
22 require the PBM to provide the following information for each  
23 contract year:

24 (i) The percentage of all prescriptions that were  
25 provided through retail pharmacies compared to mail order  
26 pharmacies and the percentage of prescriptions for which  
27 a generic drug was available and dispensed, known as the  
28 generic dispensing rate, by pharmacy type, including an  
29 independent pharmacy, chain pharmacy, supermarket  
30 pharmacy or mass merchandiser pharmacy that is licensed

1 as a pharmacy by the State and that dispenses medication  
2 to the general public, that is paid by the health  
3 benefits plan or PBM under the contract.

4 (ii) The aggregate amount and the type of rebates,  
5 discounts or price concessions, excluding bona fide  
6 service fees, including, but not limited to, distribution  
7 service fees, inventory management fees, product stocking  
8 allowances and fees associated with administrative  
9 services agreements and patient care programs negotiated  
10 by the PBM that are attributable to patient utilization  
11 under the plan, the aggregate amount of the rebates,  
12 discounts or price concessions that are passed through to  
13 the plan sponsor and the total number of prescriptions  
14 that were dispensed.

15 (iii) The aggregate amount of the difference between  
16 the amount the health benefits plan pays the PBM and the  
17 amount that the PBM pays retail pharmacies and mail order  
18 pharmacies and the total number of prescriptions that  
19 were dispensed.

20 (4) A public pharmacy benefits management contract shall  
21 authorize real-time, electronic, line-by-line, claim-by-claim  
22 review of invoiced PBM pharmacy claims, including using  
23 automated claims adjudication technology to allow for online  
24 comparison of PBM invoices and auditing of other aspects of  
25 the services provided by the PBM.

26 Section 605. Effect of noncompliance.

27 Any provision of a public pharmacy benefits management  
28 contract that violates this chapter shall be void and  
29 unenforceable.

30 Section 606. Audits.

1       The Insurance Commissioner may, upon request, audit a  
2 contract for pharmacy benefit management services for compliance  
3 with the provisions of this chapter.

4       Section 2. This act shall take effect in 60 days.