

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 568 Session of 2019

INTRODUCED BY DeLUCA, MILLARD, MURT, OTTEN, HARKINS, PASHINSKI, ULLMAN, CALTAGIRONE, FREEMAN AND HILL-EVANS, MARCH 7, 2019

REFERRED TO COMMITTEE ON INSURANCE, MARCH 7, 2019

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," in casualty insurance, providing
 12 for pharmaceutical cost transparency.

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 635.8. Pharmaceutical Cost Transparency.--(a) This
 19 section shall apply to a prescription drug that has one or more
 20 of the following:

21 (1) An average wholesale price of five thousand dollars
 22 (\$5,000) or more annually.

23 (2) An average wholesale price of five thousand dollars

1 (\$5,000) or more per course of treatment.

2 (3) An average wholesale price that has increased by fifty
3 per centum (50%) or more over the past five years.

4 (4) An average wholesale price that has increased by twenty-
5 five per centum (25%) or more over the past twelve months.

6 (b) A health insurance policy or government program
7 providing benefits for a prescription drug described under
8 subsection (a) may not be required to provide the benefits if
9 the Insurance Department finds that the manufacturer of the
10 prescription drug has not filed a report on the prescription
11 drug as required under subsection (c).

12 (c) On or before March 1 of each year, a manufacturer of a
13 prescription drug described under subsection (a) shall file with
14 the Insurance Department the following information on a form
15 prescribed by the Insurance Department:

16 (1) The costs for the production of the drug, including the
17 following:

18 (i) The research and development costs paid by the
19 manufacturer and, separately, the research and development costs
20 paid by any predecessor in the development of the drug.

21 (ii) The costs of clinical trials and other regulatory costs
22 paid by the manufacturer and, separately, the costs of clinical
23 trials and other regulatory costs paid by any predecessor in the
24 development of the drug.

25 (iii) The costs for materials, manufacturing and
26 administration attributable to the drug.

27 (iv) The costs paid by any entity other than the
28 manufacturer or predecessor for research and development,
29 including, but not limited to, any amount from Federal, State or
30 other governmental programs or any form of subsidies, grants or

1 other support.

2 (v) The other costs to acquire the drug, including costs for
3 the purchase of patents, licensing or acquisition of a corporate
4 entity owning rights to the drug while in development, or all of
5 the costs under this subparagraph.

6 (vi) The marketing and advertising costs for the promotion
7 of the drug directly to consumers, including, but not limited
8 to:

9 (A) Costs associated with coupons or discounts, that are
10 directed to consumers and the amount redeemed.

11 (B) Marketing and advertising costs for promotion of the
12 drug directly or indirectly to prescribers.

13 (C) Any other advertising for the drug.

14 (D) Any payments or contributions to providers not employed
15 on a full-time basis by the manufacturer, regardless of whether
16 the payments or contributions are connected to a particular
17 drug.

18 (2) The filing under this subsection must be audited and
19 certified by an independent third-party auditor prior to filing.

20 (3) A cumulative annual history of average wholesale price
21 increases for the drug expressed as percentages, including the
22 months each average wholesale price increase took effect.

23 (4) The profit attributable to the drug as represented in
24 dollars and represented as a percentage of the total company
25 profits that were derived from the sale of the drug.

26 (5) A description of the manufacturers' patient prescription
27 assistance programs, including, but not limited to:

28 (i) The amount of financial assistance provided.

29 (ii) The amount of financial assistance provided to
30 residents of this Commonwealth.

1 (iii) The average amount of assistance per resident of this
2 Commonwealth and for which drugs the assistance was provided.

3 (iv) The parameters and qualifications for the patient
4 prescription assistance programs.

5 (6) Any payments or financial incentives, direct or
6 indirect, to hospitals, health care providers or physicians
7 attributable to the drug described under subsection (a),
8 including, but not limited to, speaking fees, dinners, research,
9 consulting, charitable donations, grants or other incentives.

10 (d) The Insurance Department may promulgate regulations as
11 may be necessary and appropriate to carry out the provisions of
12 this section.

13 (e) This section shall apply as follows:

14 (1) For a health insurance policy for which either rates or
15 forms are required to be filed with the Federal Government or
16 the Insurance Department, this section shall apply to any policy
17 for which a form or rate is first permitted to be used on or
18 after one hundred eighty days following the effective date of
19 this section.

20 (2) For a health insurance policy for which neither rates
21 nor forms are required to be filed with the Federal Government
22 or the Insurance Department, this section shall apply to any
23 policy issued or renewed on or after one hundred eighty days
24 following the effective date of this section.

25 (f) As used in this section:

26 (1) "Government program" means any of the following:

27 (i) The Commonwealth's medical assistance program
28 established under the act of June 13, 1967 (P.L.31, No.21),
29 known as the "Human Services Code."

30 (ii) The program for comprehensive health care for uninsured

1 children established under Article XXIII-A.

2 (iii) The program of pharmaceutical assistance for the
3 elderly established under Chapter 5 of the act of August 26,
4 1971 (P.L.351, No.91), known as the "State Lottery Law."

5 (2) "Health insurance policy" means a policy, subscriber
6 contract, certificate or plan issued by an insurer that provides
7 medical or health care coverage. The term does not include any
8 of the following:

9 (i) An accident only policy.

10 (ii) A credit only policy.

11 (iii) A long-term care or disability income policy.

12 (iv) A specified disease policy.

13 (v) A Medicare supplement policy.

14 (vi) A TRICARE policy, including a Civilian Health and
15 Medical Program of the Uniformed Services (CHAMPUS) supplement
16 policy.

17 (vii) A fixed indemnity policy.

18 (viii) A dental only policy.

19 (ix) A vision only policy.

20 (x) A workers' compensation policy.

21 (xi) An automobile medical payment policy under 75 Pa.C.S.
22 (relating to vehicles).

23 (xii) Any other similar policies providing for limited
24 benefits.

25 (3) "Insurer" means an entity licensed by the Insurance
26 Department with accident and health authority to issue a policy,
27 subscriber contract, certificate or plan that provides medical
28 or health care coverage that is offered or governed under any of
29 the following:

30 (i) This act, including section 630 and Article XXIV.

1 (ii) The act of December 29, 1972 (P.L.1701, No.364), known
2 as the "Health Maintenance Organization Act."

3 (iii) 40 Pa.C.S. Ch. 61 (relating to hospital plan
4 corporations) or 63 (relating to professional health services
5 plan corporations).

6 (4) "Prescription" means a written or oral order issued by a
7 duly licensed medical practitioner in the course of the
8 practitioner's professional practice for a controlled substance,
9 other drug or device or medication that is dispensed for use by
10 a consumer.

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