

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## HOUSE BILL

No. 941 Session of  
2019

INTRODUCED BY HEFFLEY, MATZIE, NEILSON, WARNER, BURGOS, SAINATO, FRANKEL, READSHAW, BARRAR, LONGIETTI, MILLARD, KEEFER, SIMS, DeLUCA, BERNSTINE, MULLINS, CRUZ, WHEELAND, MARSHALL, SCHWEYER, MOUL, BROWN, STRUZZI, KENYATTA, PYLE, McCLINTON, DEASY, EVERETT, KNOWLES, SCHMITT, HERSHEY, KLUNK, T. DAVIS, DUSH, FLYNN, BURNS, GREINER, KAUFFMAN, SAYLOR, SCHLOSSBERG, RIGBY, McNEILL, KORTZ, OWLETT, MASSER, ISAACSON, GAYDOS, QUINN, BOYLE, KOSIEROWSKI, PASHINSKI, MADDEN, WILLIAMS, ULLMAN, THOMAS, STURLA, WENTLING, TOOHL, GABLER, SOLOMON AND HARKINS, MAY 7, 2019

SENATOR BROOKS, HEALTH AND HUMAN SERVICES, IN SENATE, AS AMENDED, JUNE 29, 2020

## AN ACT

1 Amending the act of June 13, 1967 (P.L.31, No.21), entitled "An  
2 act to consolidate, editorially revise, and codify the public  
3 welfare laws of the Commonwealth," in public assistance,  
4 further providing for medical assistance pharmacy services.

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

7 Section 1. Section 449 of the act of June 13, 1967 (P.L.31,  
8 No.21), known as the Human Services Code, is amended to read:

9 Section 449. Medical Assistance Pharmacy Services.--(a) Any  
10 managed care [entity] organization under contract to the  
11 department must contract on an equal basis with any pharmacy  
12 qualified to participate in the Medical Assistance Program that  
13 is willing to comply with the managed care [entity's]  
14 organization's pharmacy payment rates and terms and to adhere to

1 quality standards established by the managed care [entity]  
2 organization.

3 (b) The department may conduct an audit or review of an  
4 entity. In the course of an audit or review under this  
5 subsection, a managed care organization utilizing a pharmacy  
6 benefit manager shall provide medical assistance-specific  
7 information from a pharmacy contract or agreement to the  
8 department.

9 (c) A contract or agreement between an entity and a pharmacy  
10 may not include any of the following:

11 (1) A confidentiality provision that prohibits the  
12 disclosure of information to the department.

13 (2) Any provision that restricts the disclosure of  
14 information to or communication with a managed care organization  
15 or the department.

16 (d) An entity shall maintain records sufficient to disclose,  
17 upon the department's request, information regarding the  
18 provision of pharmacy services eligible for payment by the  
19 medical assistance program.

20 (e) Information disclosed or produced by an entity to the  
21 department under this section shall not be subject to QUALIFY AS <--  
22 AN EXEMPTION UNDER SECTION 708 OF the act of February 14, 2008  
23 (P.L.6, No.3), known as the Right-to-Know Law.

24 ~~(f) If an entity approves a claim for payment under the~~ <--  
25 ~~medical assistance program, the entity may not retroactively~~  
26 ~~deny or modify the payment unless any of the following apply:~~

27 ~~(1) The claim was fraudulent.~~

28 ~~(2) The claim was duplicative of a previously paid claim.~~

29 ~~(3) The pharmacy did not dispense the pharmacy service on~~  
30 ~~the claim.~~

1 ~~(g) A managed care organization or pharmacy benefit manager~~  
2 ~~may not do any of the following:~~

3 ~~(1) Mandate that a medical assistance recipient use a~~  
4 ~~specific pharmacy or other entity if any of the following apply:~~

5 ~~(i) The managed care organization or pharmacy benefit~~  
6 ~~manager has an ownership interest in the pharmacy or other~~  
7 ~~entity.~~

8 ~~(ii) The pharmacy or other entity has an ownership interest~~  
9 ~~in the managed care organization or pharmacy benefit manager.~~

10 ~~(2) Provide an incentive to a medical assistance recipient~~  
11 ~~to encourage the use of a specific pharmacy.~~

12 ~~(h) A pharmacy benefit manager or pharmacy services~~  
13 ~~administration organization may not do any of the following:~~

14 ~~(1) Require that a pharmacist or pharmacy participate in a~~  
15 ~~network managed by the pharmacy benefit manager or pharmacy~~  
16 ~~services administration organization as a condition for the~~  
17 ~~pharmacist or pharmacy to participate in another network managed~~  
18 ~~by the same pharmacy benefit manager or pharmacy services~~  
19 ~~administration organization.~~

20 ~~(2) Automatically enroll or disenroll a pharmacist or~~  
21 ~~pharmacy without cause in a contract or modify an existing~~  
22 ~~agreement without written agreement of the pharmacist or~~  
23 ~~pharmacy.~~

24 ~~(3) Charge or retain a differential between what is billed~~  
25 ~~to a managed care organization as a reimbursement for a pharmacy~~  
26 ~~service and what is paid to pharmacies by the pharmacy benefit~~  
27 ~~manager or pharmacy services administration organization for the~~  
28 ~~pharmacy service.~~

29 ~~(4) Charge pharmacy transmission fees.~~

30 ~~(i) (F) A managed care organization or pharmacy benefit~~

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1 manager shall provide payment for a pharmacy service that is a  
2 covered benefit if the pharmacy service is performed by a  
3 licensed pharmacist in accordance with all of the following:

4 (1) The pharmacy service performed is within the scope of  
5 practice of the licensed pharmacist.

6 (2) The managed care organization or pharmacy benefit  
7 manager would cover the pharmacy service if the pharmacy service  
8 was performed by a physician, an advanced practice registered  
9 nurse or a physician assistant- AS DETERMINED BY THE FEE <--

10 SCHEDULE PUBLISHED BY THE DEPARTMENT.

11 (G) BEGINNING JANUARY 1, 2021, FOR EACH PRESCRIPTION FILLED,  
12 A PARTICIPATING PHARMACY SHALL RECEIVE REIMBURSEMENT FOR DRUG  
13 COST AT A RATE NO LESS THAN THE COST OF THE DRUG PRODUCT AS  
14 GENERALLY AVAILABLE TO RETAIL PHARMACIES, UTILIZING AN AVERAGE  
15 ACQUISITION COST REIMBURSEMENT METHODOLOGY, AND AFTER ANY  
16 PHARMACY BENEFIT MANAGER OR PAYER ADJUSTMENT TO THAT DRUG COST.  
17 THE PHARMACY SHALL ALSO RECEIVE A REASONABLE PROFESSIONAL  
18 DISPENSING FEE FOR EACH PRESCRIPTION FILLED AS DETERMINED BY THE  
19 DEPARTMENT.

20 ~~(j)~~ (H) As used in this section, the following words and <--  
21 phrases shall have the meanings given to them in this  
22 subsection:

23 "Entity" means a pharmacy, pharmacy benefit manager, pharmacy  
24 services administration organization or other entity that  
25 manages, processes, influences the payment for or dispenses  
26 pharmacy services to medical assistance recipients in the  
27 managed care delivery system.

28 "Pharmacy benefit management" means any of the following:

29 (1) The procurement of prescription drugs at a negotiated  
30 contracted rate for distribution within this Commonwealth.

1 (2) The administration or management of prescription drug  
2 benefits provided by a managed care organization.

3 (3) The administration of pharmacy benefits, including any  
4 of the following:

5 (i) Operating a mail-service pharmacy.

6 (ii) Processing claims.

7 (iii) Managing a retail pharmacy network.

8 (iv) Paying claims to pharmacies, including retail,  
9 specialty or mail-order pharmacies, for prescription drugs  
10 dispensed to medical assistance recipients receiving services in  
11 the managed care delivery system via a retail or mail-order  
12 pharmacy.

13 (v) Developing and managing a clinical formulary or  
14 preferred drug list, utilization management or quality assurance  
15 programs.

16 (vi) Rebate contracting and administration.

17 (vii) Managing a patient compliance, therapeutic  
18 intervention and generic substitution program.

19 (viii) Operating a disease management program.

20 (ix) Setting pharmacy payment pricing and methodologies,  
21 including maximum allowable cost and determining single or  
22 multiple source drugs.

23 "Pharmacy benefit manager" means a person, business or other  
24 entity that performs pharmacy benefit management. ~~The term~~ <--

25 ~~includes a wholly owned subsidiary of a managed care~~  
26 ~~organization that performs pharmacy benefits management. THE~~ <--

27 TERM DOES NOT INCLUDE AN ENTITY THAT HOLDS A VALID LICENSE FROM  
28 THE INSURANCE DEPARTMENT WITH ACCIDENT AND HEALTH AUTHORITY TO  
29 ISSUE A HEALTH INSURANCE POLICY AND GOVERNED UNDER ANY OF THE  
30 FOLLOWING:

1     (1) THE ACT OF MAY 17, 1921 (P.L.682, NO.284), KNOWN AS THE  
2 INSURANCE COMPANY LAW OF 1921.

3     (2) THE ACT OF DECEMBER 29, 1972 (P.L.1701, NO.364), KNOWN  
4 AS THE HEALTH MAINTENANCE ORGANIZATION ACT.

5     (3) 40 PA.C.S. CH. 61 (RELATING TO HOSPITAL PLAN  
6 CORPORATIONS) OR 63 (RELATING TO PROFESSIONAL HEALTH SERVICES  
7 PLAN CORPORATIONS).

8     "Pharmacy services administration organization" means a  
9 person, business or other entity that performs any of the  
10 following:

11     (1) Negotiates or contracts with a managed care organization  
12 or pharmacy benefit manager on behalf of its pharmacy members.

13     (2) Negotiates payment rates, payments or audit terms on  
14 behalf of its pharmacy members.

15     (3) Collects or reconciles payments on behalf of its  
16 pharmacy members.

17     Section 2. The amendment of section 449 of the act shall  
18 apply to any agreement or contract relating to pharmacy services  
19 to medical assistance recipients in the managed care delivery  
20 system entered into or amended on or after the effective date of  
21 this section.

22     Section 3. This act shall take effect in 60 days.