
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1319 Session of
2021

INTRODUCED BY LEWIS DELROSSO, POLINCHOCK, RYAN, HILL-EVANS,
SANKEY, SAYLOR AND WHEELAND, APRIL 30, 2021

REFERRED TO COMMITTEE ON HEALTH, APRIL 30, 2021

AN ACT

1 Prohibiting discrimination in pharmacy benefits plans and
2 prevention or interference with patient choice; providing for
3 reimbursement claims methodology and for safety net
4 protection; and imposing penalties.

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

7 Section 1. Short title.

8 This act shall be known and may be cited as the
9 Nondiscrimination in Pharmacy Benefits Plans Act.

10 Section 2. Definitions.

11 The following words and phrases when used in this act shall
12 have the meanings given to them in this section unless the
13 context clearly indicates otherwise:

14 "Contract pharmacy." A pharmacy that provides services to a
15 covered entity under a contractual arrangement as described in
16 75 Fed. Reg. 10272 (March 5, 2010).

17 "Covered entity." A health care provider or health care
18 facility approved under section 256b of the Public Health
19 Service Act.

1 "Department." The Department of Human Services of the
2 Commonwealth.

3 "Managed care organization." A licensed managed care
4 organization with whom the department has contracted to provide
5 or arrange for services to a Medicaid recipient.

6 "Pharmacy benefits plan." As follows:

7 (1) An entity that administers or manages prescription
8 drug benefits or pays a reimbursement to a provider that
9 dispenses prescription drugs, including an insurer, a health
10 benefit plan, a self-insured plan or a workers' compensation
11 insurance plan, or an entity that manages prescription drug
12 benefits on behalf of an insurer, a health benefit plan, a
13 self-insured plan or a workers' compensation insurance plan.

14 (2) The term does not include any of the following:

15 (i) A medical assistance fee-for-service program
16 under Article IV of the act of June 13, 1967 (P.L.31,
17 No.21), known as the Human Services Code.

18 (ii) An individual paying for drugs on his or her
19 own behalf or on behalf of another individual.

20 (iii) The Pennsylvania Employees Benefit Trust Fund
21 or any successor organization that only provides
22 prescription drug benefits for employees of the
23 Commonwealth and their covered dependents.

24 "Public Health Service Act." The Public Health Service Act
25 (58 Stat. 682, 42 U.S.C. § 201 et seq.).

26 Section 3. Discrimination in pharmacy benefits plans
27 prohibited.

28 A pharmacy benefits plan that reimburses a covered entity
29 under section 256b of the Public Health Service Act or a
30 contract pharmacy for drugs under a contract shall not:

1 (1) pay the covered entity or contract pharmacy less
2 than the wholesale acquisition cost specified in section
3 1847A(c) (6) (B) of the Medicare Prescription Drug,
4 Improvement, and Modernization Act of 2003 (Public Law 108-
5 172, 117 Stat. 2066) for drugs purchased under section 256b
6 of the Public Health Service Act;

7 (2) prevent the covered entity or contract pharmacy from
8 using drugs purchased under section 256b of the Public Health
9 Service Act when submitting a claim for reimbursement or
10 decline to cover the claim for reimbursement due to the claim
11 being for drugs purchased in accordance with this act;

12 (3) assess any fee, chargeback or other adjustment on
13 the covered entity or contract pharmacy or provide the
14 covered entity or contract pharmacy with a lower dispensing
15 fee on the basis that the covered entity or contract pharmacy
16 participates in the program established under section 256b of
17 the Public Health Service Act;

18 (4) exclude the covered entity or contract pharmacy from
19 any of the pharmacy benefit plan's networks or disparately
20 treat the covered entity or contract pharmacy in terms of
21 network participation or standard contractual terms, if the
22 covered entity or contract pharmacy accepts the payment
23 levels specified under paragraph (1) and the standard
24 nondiscriminatory terms for retail and specialty pharmacies
25 in use by the pharmacy benefits plan;

26 (5) preclude the covered entity or contract pharmacy
27 from dispensing or delivering medications by mail or
28 reimburse the covered entity or contract pharmacy less if the
29 covered entity or contract pharmacy dispenses or delivers
30 medications by mail;

1 (6) impose any limitation on the distance between the
2 covered entity and contract pharmacy; or

3 (7) except as necessary to comply with paragraph (1) or
4 section 256b of the Public Health Service Act, request,
5 require or compel the transmission of any ingredient cost,
6 pricing data or other data pertaining to the program
7 established under section 256b of the Public Health Service
8 Act.

9 Section 4. Prevention or interference with patient choice
10 prohibited.

11 If a patient is eligible to receive drugs under section 256b
12 of the Public Health Service Act from a covered entity or
13 contract pharmacy, a pharmacy benefits plan may not discriminate
14 against the covered entity or contract pharmacy in a manner that
15 prevents or interferes with the patient's choice to receive
16 drugs from the covered entity or contract pharmacy, including
17 cost-sharing differentials, drug formulary differences, refill
18 limitations or supply-day restrictions.

19 Section 5. Reimbursement claims methodology.

20 The department, a managed care organization or an entity that
21 administers or manages prescription drug benefits or that pays a
22 reimbursement to a provider that dispenses prescription drugs,
23 including an insurer, health benefit plan, self-insured plan or
24 workers' compensation insurance plan, on behalf of the
25 department or a managed care organization, shall rely
26 exclusively on a claims-level methodology involving the use of a
27 nationally recognized billing modifier or retrospective claims
28 identification process for identifying drugs purchased under
29 section 256b of the Public Health Service Act to ensure that
30 claims for the drugs are removed from the encounter data

1 required under section 1903(m) (2) (A) (xiii) of Title XVIII of the
2 Social Security Act (Public Law 74-271, 42 U.S.C. § 1396b(m) (2)
3 (A) (xiii)) and excluded from Medicaid drug rebate requests.

4 Section 6. Safety net protection.

5 (a) Reimbursement.--Except as provided under subsection (b),
6 the department shall reimburse a contract pharmacy in the
7 Medicaid fee-for-service delivery system for a drug purchased
8 through the program established under section 256b of the Public
9 Health Service Act at the maximum price for the drug allowable
10 under section 256b of the Public Health Service Act, plus a
11 professional dispensing fee. If a drug billed to the Medicaid
12 fee-for-service delivery system is not purchased through the
13 program established under section 256b of the Public Health
14 Service Act, the department shall reimburse the contract
15 pharmacy in the Medicaid fee-for-service delivery system in
16 accordance with the methodology applicable to retail pharmacies
17 generally.

18 (b) Exception.--If at any time a drug that is covered by a
19 managed care organization becomes exclusively covered by the
20 Medicaid fee-for-service delivery system, the professional
21 dispensing fee under subsection (a) for a drug purchased through
22 the program established under section 256b of the Public Health
23 Service Act shall be increased to approximate the methodology
24 specified under section 3(1).

25 Section 7. Penalties.

26 (a) Enforcement.--The Office of Attorney General shall
27 investigate complaints and enforce this act and may examine or
28 audit the books and records of a pharmacy benefits plan or
29 related party to determine if the party is compliant with this
30 act.

1 (b) Fines.--The Office of Attorney General shall impose,
2 upon written notice, a fine on a pharmacy benefits plan that
3 violates the provision of this act in accordance with the
4 following:

5 (1) For a pharmacy benefits plan that violates section
6 3(1), (2) or (3), an amount of \$1,000 per wrongfully denied
7 claim or improperly paid claim.

8 (2) For a pharmacy benefits plan that violates section
9 3(4), an amount of \$1,000 per day for each excluded pharmacy.

10 (c) Suspension.--The Office of Attorney General shall
11 suspend the ability of a pharmacy benefits plan to conduct
12 business in this Commonwealth if a violation under section 3(1),
13 (2), (3) or (4) is not rectified within 30 days of the date when
14 the written notice is sent to the pharmacy benefits plan under
15 subsection (b).

16 (d) Contracts.--A contract term that violates section 3(1),
17 (2) or (3) shall be null and void.

18 (e) Injunctive relief.--A covered entity or contract
19 pharmacy may seek injunctive relief to enforce the provisions of
20 this act.

21 Section 8. Effective date.

22 This act shall take effect in 60 days.