
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,
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QUINN, BOYLE, KOSIEROWSKI, PASHINSKI, MADDEN, WILLIAMS,
ULLMAN, THOMAS, STURLA, WENTLING, TOOHL, GABLER, SOLOMON,
HARKINS AND POLINCHOCK, MAY 7, 2019

AMENDMENTS TO SENATE AMENDMENTS, HOUSE OF REPRESENTATIVES,
NOVEMBER 18, 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 and providing for prescription drug pricing study.

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

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

10 Section 449. Medical Assistance Pharmacy Services.--(a) Any
11 managed care [entity] organization under contract to the
12 department, or an entity with which the managed care
13 organization contracts, must contract on an equal basis with any
14 pharmacy qualified to participate in the Medical Assistance

1 Program that is willing to comply with the managed care
2 [entity's] organization's or entity's pharmacy payment rates and
3 terms and to adhere to quality standards established by the
4 managed care [entity] organization or entity.

5 (b) The following shall apply:

6 (1) The department may conduct an audit or review of an
7 entity for the purpose of determining compliance with this
8 section.

9 (2) In the course of an audit or review under paragraph (1),
10 an entity shall provide medical assistance-specific information
11 from a pharmacy contract or agreement to the department.

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

14 (1) A confidentiality provision that prohibits the
15 disclosure of information to the department.

16 (2) Any provision that restricts the disclosure of
17 information to or communication with a managed care organization
18 or the department.

19 (d) An entity shall maintain records regarding pharmacy
20 services eligible for payment by the medical assistance program
21 and shall disclose the information to the department upon its
22 request.

23 (e) Information disclosed or produced by an entity to the
24 department under this section shall not be subject to public
25 access under the act of February 14, 2008 (P.L.6, No.3), known
26 as the "Right-to-Know Law."

27 (f) The following shall apply:

28 (1) If an entity approves a claim for payment under the
29 medical assistance program, the entity may not retroactively
30 deny or modify the adjudicated claim unless any of the following

1 apply:

2 (i) The claim was fraudulent.

3 (ii) The claim was duplicative of a previously paid claim.

4 (iii) The pharmacy did not dispense the pharmacy service on
5 the claim.

6 (2) Nothing in this subsection shall be construed to
7 prohibit the recovery of an adjudicated claim that was
8 determined to be an overpayment or underpayment resulting from
9 audit, review or investigation by a Federal or State agency or
10 managed care organization.

11 (g) A managed care organization or pharmacy benefit manager
12 may not mandate that a medical assistance recipient use a
13 specific pharmacy unless it is consistent with subsection (a)
14 and is preapproved by the department.

15 (h) A pharmacy benefit manager or pharmacy services
16 administration organization may not do any of the following:

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

23 (2) Automatically enroll or disenroll a pharmacist or
24 pharmacy without cause.

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

30 (4) Charge pharmacy transmission fees unless the amount of

1 the fee is disclosed and applied at the time of claim
2 adjudication.

3 (i) A managed care organization shall submit its policies
4 and procedures, and any revisions, for development of network
5 pharmacy payment methodology to the department. The department
6 shall review all changes to pharmacy payment methodology prior
7 to implementation.

8 (j) A managed care organization utilizing a pharmacy benefit
9 manager shall report to the department information related to
10 each outpatient drug encounter, including the following:

11 (1) The amount paid to the pharmacy benefit manager by the
12 managed care organization.

13 (2) The amount paid by the pharmacy benefit manager to the
14 pharmacy.

15 (3) Any differences between the amount paid in paragraph (1)
16 and the amount paid in paragraph (2).

17 (4) Other information as requested by the department.

18 (k) A pharmacy shall, upon request BY THE DEPARTMENT, submit <--
19 the actual acquisition cost of prescriptions dispensed to
20 medical assistance beneficiaries.

21 (l) As used in this section, the following words and phrases
22 shall have the meanings given to them in this subsection:

23 "Adjudicated claim" means a claim that has been processed to
24 payment or denial.

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

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

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

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

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

7 (i) Operating a mail-service pharmacy.

8 (ii) Processing claims.

9 (iii) Managing a retail pharmacy network.

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

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

18 (vi) Rebate contracting and administration.

19 (vii) Managing a patient compliance, therapeutic
20 intervention and generic substitution program.

21 (viii) Operating a disease management program.

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

25 "Pharmacy benefit manager" means a business that performs
26 pharmacy benefit management. The term does not include a
27 business that holds a valid license from the Insurance
28 Department with accident and health authority to issue a health
29 insurance policy and governed under any of the following:

30 (1) The act of May 17, 1921 (P.L.682, No.284), known as "The

1 Insurance Company Law of 1921."

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

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

7 "Pharmacy services administration organization" means an
8 organization comprised of pharmacy members that performs any of
9 the following:

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

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

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

16 Section 2. The act is amended by adding a section to read:

17 Section 449.1. Prescription Drug Pricing Study.--(a) The
18 Legislative Budget and Finance Committee shall conduct a study
19 analyzing prescription drug pricing under the medical assistance
20 managed care program. The committee shall do all of the
21 following as it relates to the medical assistance managed care
22 program only:

23 (1) Provide an overview of the distribution of and payment
24 for pharmaceuticals in the medical assistance managed care
25 program.

26 (2) Review the reimbursement practices of pharmacy benefit
27 managers to pharmacies within this Commonwealth.

28 (3) Review the reimbursement practices of managed care
29 organizations to pharmacy benefit managers.

30 (4) Investigate and compare the reimbursement rates paid by

1 pharmacy benefit managers to independent pharmacies and to chain
2 pharmacies.

3 (5) Study the best practices and laws adopted by other
4 states to address concerns with pharmacy reimbursement practices
5 of pharmacy benefit managers.

6 (b) The Legislative Budget and Finance Committee shall
7 review and utilize data from the most recent twelve-month
8 period.

9 (c) The department shall provide the following data FOR THE <--
10 MEDICAL ASSISTANCE MANAGED CARE PROGRAM to the Legislative
11 Budget and Finance Committee:

12 (1) The amount paid to a pharmacy provider per claim,
13 including ingredient cost and the amount of any copayment
14 deducted from the payment.

15 (2) The transmission fees charged by a pharmacy benefit
16 manager to a pharmacy provider.

17 (3) The amount charged by the pharmacy benefit manager to
18 the medical assistance managed care organization per claim,
19 including all administrative fees and processing charges
20 associated with the claim.

21 (4) Rebates paid by the pharmacy benefit manager to the
22 managed care organization.

23 (5) Any other data the Legislative Budget and Finance
24 Committee deems necessary.

25 (d) Pharmacy benefit managers and medical assistance managed
26 care organizations shall provide the required data under
27 subsection (c) to the department within 45 days of the effective
28 date of this section for distribution to the Legislative Budget
29 and Finance Committee. The providing of data by the pharmacy
30 benefit managers and medical assistance managed care

1 organizations to department or by the department to the
2 Legislative Budget and Finance Committee shall not constitute a
3 waiver of any applicable privilege or claim of confidentiality.
4 All data shall be given confidential treatment, shall not be
5 subject to subpoena by a third party entity and may not be made
6 public or otherwise shared by the department, the Legislative
7 Budget and Finance Committee or any other person except to the
8 extent allowed under this subsection.

9 (e) All data provided under subsection (b) for purposes of
10 conducting the study shall be in a form that is de-identified of
11 personal health information.

12 (f) The Legislative Budget and Finance Committee shall
13 publish only aggregate data in the report. Any information
14 disclosed or produced by a pharmacy benefit manager or a medical
15 assistance managed care organization for the purposes of this
16 study shall be confidential and not be subject to the act of
17 February 14, 2008 (P.L.6, No.3), known as the "Right-to-Know
18 Law."

19 (g) The Legislative Budget and Finance Committee shall
20 submit a report of its findings and recommendations for
21 legislative action to the General Assembly and the department
22 within twelve months of the receipt of the data from the
23 department in subsection (c).

24 (h) As used in this section, the following words and phrases
25 shall have the meanings given to them in this subsection:

26 "Adjudicated claim" shall have the same meaning as the term
27 does in section 449.

28 "Entity" shall have the same meaning as the term does in
29 section 449.

30 "Pharmacy benefit management" shall have the same meaning as

1 the term does in section 449.

2 "Pharmacy benefit manager" shall have the same meaning as the
3 term does in section 449.

4 "Pharmacy services administration organization" shall have
5 the same meaning as the term does in section 449.

6 Section 3. The amendment of section 449 of the act shall
7 apply to any agreement or contract relating to pharmacy services
8 to medical assistance recipients in the managed care delivery
9 system entered into or amended on or after the effective date of
10 this section.

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