

AMENDMENTS TO HOUSE BILL NO. 941

Sponsor: SENATOR AUMENT

Printer's No. 4049

1 Amend Bill, page 1, lines 3 and 4, by striking out "in public
2 assistance," in line 3 and all of line 4 and inserting
3 in public assistance, further providing for medical assistance
4 pharmacy services and providing for prescription drug pricing
5 study.

6 Amend Bill, page 1, lines 7 through 14; pages 2 through 5,
7 lines 1 through 30; page 6, lines 1 through 22; by striking out
8 all of said lines on said pages and inserting

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

11 Section 449. Medical Assistance Pharmacy Services.--(a) Any
12 managed care [entity] organization under contract to the
13 department, or an entity with which the managed care
14 organization contracts, must contract on an equal basis with any
15 pharmacy qualified to participate in the Medical Assistance
16 Program that is willing to comply with the managed care
17 [entity's] organization's or entity's pharmacy payment rates and
18 terms and to adhere to quality standards established by the
19 managed care [entity] organization or entity.

20 (b) The following shall apply:

21 (1) The department may conduct an audit or review of an
22 entity for the purpose of determining compliance with this
23 section.

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

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

29 (1) A confidentiality provision that prohibits the
30 disclosure of information to the department.

31 (2) Any provision that restricts the disclosure of
32 information to or communication with a managed care organization
33 or the department.

34 (d) An entity shall maintain records regarding pharmacy
35 services eligible for payment by the medical assistance program

1 and shall disclose the information to the department upon its
2 request.

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

7 (f) The following shall apply:

8 (1) If an entity approves a claim for payment under the
9 medical assistance program, the entity may not retroactively
10 deny or modify the adjudicated claim unless any of the following
11 apply:

12 (i) The claim was fraudulent.

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

14 (iii) The pharmacy did not dispense the pharmacy service on
15 the claim.

16 (2) Nothing in this subsection shall be construed to
17 prohibit the recovery of an adjudicated claim that was
18 determined to be an overpayment or underpayment resulting from
19 audit, review or investigation by a Federal or State agency or
20 managed care organization.

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

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

27 (1) Require that a pharmacist or pharmacy participate in a
28 network managed by the pharmacy benefit manager or pharmacy
29 services administration organization as a condition for the
30 pharmacist or pharmacy to participate in another network managed
31 by the same pharmacy benefit manager or pharmacy services
32 administration organization.

33 (2) Automatically enroll or disenroll a pharmacist or
34 pharmacy without cause.

35 (3) Charge or retain a differential between what is billed
36 to a managed care organization as a reimbursement for a pharmacy
37 service and what is paid to pharmacies by the pharmacy benefit
38 manager or pharmacy services administration organization for the
39 pharmacy service.

40 (4) Charge pharmacy transmission fees unless the amount of
41 the fee is disclosed and applied at the time of claim
42 adjudication.

43 (i) A managed care organization shall submit its policies
44 and procedures, and any revisions, for development of network
45 pharmacy payment methodology to the department. The department
46 shall review all changes to pharmacy payment methodology prior
47 to implementation.

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

51 (1) The amount paid to the pharmacy benefit manager by the

1 managed care organization.

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

4 (3) Any differences between the amount paid in paragraph (1)
5 and the amount paid in paragraph (2).

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

7 (k) A pharmacy shall, upon request, submit the actual
8 acquisition cost of prescriptions dispensed to medical
9 assistance beneficiaries.

10 (m) As used in this section, the following words and phrases
11 shall have the meanings given to them in this subsection:

12 "Adjudicated claim" means a claim that has been processed to
13 payment or denial.

14 "Entity" means a pharmacy, pharmacy benefit manager, pharmacy
15 services administration organization or other entity that
16 manages, processes, or influences the payment for or dispenses
17 pharmacy services to medical assistance recipients in the
18 managed care delivery system.

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

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

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

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

26 (i) Operating a mail-service pharmacy.

27 (ii) Processing claims.

28 (iii) Managing a retail pharmacy network.

29 (iv) Paying claims to pharmacies, including retail,
30 specialty or mail-order pharmacies, for prescription drugs
31 dispensed to medical assistance recipients receiving services in
32 the managed care delivery system via a retail or mail-order
33 pharmacy.

34 (v) Developing and managing a clinical formulary or
35 preferred drug list, utilization management or quality assurance
36 programs.

37 (vi) Rebate contracting and administration.

38 (vii) Managing a patient compliance, therapeutic
39 intervention and generic substitution program.

40 (viii) Operating a disease management program.

41 (ix) Setting pharmacy payment pricing and methodologies,
42 including maximum allowable cost and determining single or
43 multiple source drugs.

44 "Pharmacy benefit manager" means a business that performs
45 pharmacy benefit management. The term does not include a
46 business that holds a valid license from the Insurance
47 Department with accident and health authority to issue a health
48 insurance policy and governed under any of the following:

49 (1) The act of May 17, 1921 (P.L.682, No.284), known as "The
50 Insurance Company Law of 1921."

51 (2) The act of December 29, 1972 (P.L.1701, No.364), known

1 as the "Health Maintenance Organization Act."

2 (3) 40 Pa.C.S. Ch. 61 (relating to hospital plan
3 corporations) or 63 (relating to professional health services
4 plan corporations).

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

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

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

12 (3) Collects or reconciles payments on behalf of its
13 pharmacy members.

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

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

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

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

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

28 (4) Investigate and compare the reimbursement rates paid by
29 pharmacy benefit managers to independent pharmacies and to chain
30 pharmacies.

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

34 (b) The Legislative Budget and Finance Committee shall
35 review and utilize data from the most recent twelve-month
36 period.

37 (c) The department shall provide the following data to the
38 Legislative Budget and Finance Committee:

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

42 (2) The transmission fees charged by a pharmacy benefit
43 manager to a pharmacy provider.

44 (3) The amount charged by the pharmacy benefit manager to
45 the medical assistance managed care organization per claim,
46 including all administrative fees and processing charges
47 associated with the claim.

48 (4) Rebates paid by the pharmacy benefit manager to the
49 managed care organization.

50 (5) Any other data the Legislative Budget and Finance
51 Committee deems necessary.

1 (d) Pharmacy benefit managers and medical assistance managed
2 care organizations shall provide the required data under
3 subsection (c) to the department within 45 days of the effective
4 date of this section for distribution to the Legislative Budget
5 and Finance Committee. The providing of data by the pharmacy
6 benefit managers and medical assistance managed care
7 organizations to department or by the department to the
8 Legislative Budget and Finance Committee shall not constitute a
9 waiver of any applicable privilege or claim of confidentiality.
10 All data shall be given confidential treatment, shall not be
11 subject to subpoena by a third party entity and may not be made
12 public or otherwise shared by the department, the Legislative
13 Budget and Finance Committee or any other person except to the
14 extent allowed under this subsection.

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

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

25 (g) The Legislative Budget and Finance Committee shall
26 submit a report of its findings and recommendations for
27 legislative action to the General Assembly and the department
28 within twelve months of the receipt of the data from the
29 department in subsection (c).

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

32 "Adjudicated claim" shall have the same meaning as the term
33 does in section 449.

34 "Entity" shall have the same meaning as the term does in
35 section 449.

36 "Pharmacy benefit management" shall have the same meaning as
37 the term does in section 449.

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

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

42 Section 3. The amendment of section 449 of the act shall
43 apply to any agreement or contract relating to pharmacy services
44 to medical assistance recipients in the managed care delivery
45 system entered into or amended on or after the effective date of
46 this section.

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