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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 941 Session of  
2019

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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 AND SCHMITT, MAY 7, 2019

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REFERRED TO COMMITTEE ON HEALTH, MAY 7, 2019

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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 providing for financial disclosures for pharmacy services.

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

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

10 Section 449.1. Financial Disclosures for Pharmacy  
11 Services.--(a) A pharmacy benefits manager that contracts with  
12 a medical assistance managed care organization under contract  
13 with the department shall be prohibited from utilizing a  
14 confidentiality provision which would in effect prohibit  
15 disclosure of information to the medical assistance managed care  
16 organization and the department upon request of the medical  
17 assistance managed care organization or the department.

1 (b) Requests by the department may include the payment  
2 methodology for the pharmacy benefits manager which must include  
3 the actual amount paid by the pharmacy benefits manager to a  
4 pharmacy for dispensing an outpatient covered drug or medical  
5 supply item, including, at a minimum, the ingredient cost and  
6 dispensing fee and any other administrative fees.

7 (c) A medical assistance managed care organization that  
8 assigns financial responsibility for determining the dispensing  
9 pharmacy payment methodology, including the ingredient cost and  
10 dispensing fee, shall upon request disclose to the department  
11 all financial terms and payment arrangements that apply between  
12 the medical assistance managed care organization and the  
13 pharmacy benefits manager annually and within ten days of any  
14 changes to the financial terms and payment arrangements. For the  
15 purposes of this section, a pharmacy benefits manager which  
16 contracts with a medical assistance managed care organization  
17 shall maintain records sufficient to ensure compliance with this  
18 section and to provide information for pharmaceuticals dispensed  
19 and paid for by medical assistance to the department, including  
20 the information required under Chapter 7 of the act of November  
21 21, 2016 (P.L.1318, No.169), known as the "Pharmacy Audit  
22 Integrity and Transparency Act."

23 (d) A medical assistance managed care organization may use a  
24 pharmacy benefits manager to process prescription claims only if  
25 the medical assistance managed care organization has received  
26 advanced written approval by the department.

27 (e) A medical assistance managed care organization shall:

28 (1) Indicate to the department its intent to use a pharmacy  
29 benefits manager.

30 (2) Identify:

1 (i) the proposed pharmacy benefits manager;  
2 (ii) the medical assistance managed care organization's  
3 payment methodology for payment to the pharmacy benefits  
4 manager;  
5 (iii) the pharmacy benefits manager's payment methodology  
6 for actual payment to the providers of covered outpatient drugs;  
7 and  
8 (iv) the ownership of the proposed pharmacy benefits  
9 manager.

10 (3) Provide for each outpatient drug encounter the amount  
11 paid to the pharmacy benefits manager by the medical assistance  
12 managed care organization and the actual amount paid by the  
13 pharmacy benefits manager to the dispensing pharmacy or  
14 prescribing provider.

15 (4) Report differences between the amount paid by the  
16 medical assistance managed care organization to the pharmacy  
17 benefits manager and the amount paid by the pharmacy benefits  
18 manager to the providers of covered outpatient drugs as  
19 administrative fees.

20 (5) Report all pharmacy benefits manager administrative  
21 fees, including the difference in amounts paid as described in  
22 clause (4), in a format designated by the department.

23 (6) Submit a written description of the procedures that the  
24 medical assistance managed care organization will use to monitor  
25 the pharmacy benefits manager for compliance with this section.

26 (7) Upon request by the department, conduct an independent  
27 audit of the pharmacy benefits manager's transparent pricing  
28 arrangement.

29 (8) Develop, implement and maintain a second level pricing  
30 dispute resolution process that provides for settlement of a

1 pharmacy benefits manager network provider's pricing dispute  
2 with the pharmacy benefits manager.

3 (9) Submit to the department, prior to implementation, the  
4 medical assistance managed care organization's policies and  
5 procedures relating to the resolution of pharmacy benefits  
6 manager provider pricing disputes.

7 (f) The department shall reimburse pharmacies in the fee-  
8 for-service delivery system and pharmacies within a managed care  
9 organization's network as follows:

10 (1) If the NADAC per unit is available, the payment to the  
11 pharmacy shall be the lower of the following amounts:

12 (i) The NADAC per unit with the addition of a professional  
13 dispensing fee. The professional dispensing fee shall be no less  
14 than the fee-for-service dispensing fee approved by the Centers  
15 for Medicare and Medicaid Services.

16 (ii) The pharmacy's usual and customary charge for the drug  
17 dispensed.

18 (2) If the NADAC per unit is unavailable, the payment to the  
19 pharmacy shall be the lower of the following amounts:

20 (i) The wholesale acquisition cost with the addition of a  
21 professional dispensing fee. The professional dispensing fee  
22 shall be no less than the fee-for-service dispensing fee  
23 approved by the Centers for Medicare and Medicaid Services.

24 (ii) The pharmacy's usual and customary charge for the drug  
25 dispensed.

26 (g) Pharmacies in this Commonwealth shall be reimbursed by  
27 the department through the medical assistance program for  
28 specialty medications dispensed to medical assistance eligible  
29 patients that require special handling and ongoing patient  
30 support and interventions to ensure the desired patient

1 outcomes. The medications that are to be reimbursed as specialty  
2 medications shall be selected and published by the department.

3 Reimbursement shall consist of the following:

4 (1) Reimbursement of an estimate of the dispensing  
5 pharmacy's cost of goods, based upon a national survey-based  
6 reference price that is available throughout the pharmacy  
7 community, such as wholesale acquisition cost, average wholesale  
8 price or NADAC. Selection of the appropriate and most equitable  
9 reference pricing for the specialty medication list shall be  
10 made by the department.

11 (2) A variable care management fee, based upon each  
12 patient's primary disease state that is being treated with a  
13 medication on the specialty medication list. The care management  
14 fees shall be determined. Each care management fee shall be  
15 based upon the disease state being treated with a specialty  
16 medication and shall describe the activities, interventions,  
17 data gathering and reporting that must be completed by each  
18 pharmacy before it can invoice a care management fee related to  
19 the dispensing of a medication on the specialty medication list.

20 (h) This section shall apply to all contracts and agreements  
21 for pharmacy benefits management services executed or renewed on  
22 or after the effective date of this section.

23 (i) Any information disclosed or produced by a pharmacy  
24 benefits manager or a medical assistance managed care  
25 organization to the department under this section shall not be  
26 subject to the act of February 14, 2008 (P.L.6, No.3), known as  
27 the Right-to-Know Law.

28 (j) As used in this section, the following words and phrases  
29 shall have the meanings given to them in this subsection:

30 "NADAC" means the National Average Drug Acquisition Cost.

1 "NADAC per unit" means the current National Average Drug  
2 Acquisition Cost per unit.

3 "Pharmacy benefits management" means any of the following:

4 (1) Procurement of prescription drugs at a negotiated  
5 contracted rate for distribution within this Commonwealth to  
6 covered individuals.

7 (2) Administration or management of prescription drug  
8 benefits provided by a covered entity for the benefit of covered  
9 individuals.

10 (3) Administration of pharmacy benefits, including:

11 (i) Operating a mail-service pharmacy.

12 (ii) Claims processing.

13 (iii) Managing a retail pharmacy network management.

14 (iv) Paying claims to pharmacies for prescription drugs  
15 dispensed to covered individuals via retail, specialty or mail-  
16 order pharmacy.

17 (v) Developing and managing a clinical formulary,  
18 utilization management and quality assurance programs.

19 (vi) Rebate contracting and administration.

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

22 (viii) Operating a disease management program.

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

26 "Pharmacy benefits manager" means a person, business or other  
27 entity that performs pharmacy benefits management. The term  
28 shall include a wholly owned subsidiary of a medical assistance  
29 managed care organization that performs pharmacy benefits  
30 management.

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