No. 1987-17

AN ACT

SB 334

Amending the act of November 4, 1983 (P.L.217, No.63), entitled "An act establishing a program of limited pharmaceutical assistance for the elderly; granting powers to and imposing duties on the Department of Aging; establishing a payment system; making provisions for funding; providing for reports; and fixing penalties for violations of the pharmaceutical assistance program," changing the definitions of "prescription drug" and "private contractor"; further providing for eligible claimants who receive other assistance, for funding and for reports by the Department of Aging; further providing for the continuation of the program by receiving additional proposals for the purpose of providing pharmaceutical assistance for the elderly; further providing for program criteria and for reports by the Pharmaceutical Assistance Review Board; and further providing for the penalty for violation of the act.

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

Section 1. The definitions of "prescription drug" and "private contractor" in section 3 of the act of November 4, 1983 (P.L.217, No.63), known as the Pharmaceutical Assistance Contract for the Elderly Act, are amended to read:

Section 3. Definitions.

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

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"Prescription drug." **[All legend drugs, insulin, insulin syringes and insulin needles.]** ***All drugs requiring a prescription in this Commonwealth, insulin, insulin syringes and insulin needles.*** Experimental drugs are prohibited.

"Private contractor." **[A person, partnership or corporate entity who designs and submits a proposal to provide pharmaceutical assistance as established under the provisions of this act.]** ***A person, partnership or corporate entity who enters into a contract with the Commonwealth to provide services under the provisions of this act.***

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Section 2. Section 4 of the act, amended June 26, 1985 (P.L.74, No.27), is amended to read:

Section 4. Responsibilities of Department of Aging.

(a) Determination of eligibility.—The department shall adopt regulations relating to the determination of eligibility of prospective claimants and providers, including dispensing physicians, and the determination and elimination of program abuse. ***To this end, the department shall establish a compliance unit staffed sufficiently to fulfill this responsibility.*** The department shall have the power to declare ineligible any claimant ***or provider*** who

abuses or misuses the established prescription plan. The department shall have the power to investigate cases of suspected provider or recipient fraud.

*(a.1) Physician and pharmacy participation.—Any physician, pharmacist, pharmacy or corporation owned in whole or in part by a physician or pharmacist enrolled as a provider in the program, or who has prescribed medication for a claimant in the program, who is precluded or excluded for cause from the Department of Public Welfare's Medical Assistance Program shall be precluded or excluded from participation in the program. No physician precluded or excluded from the Department of Public Welfare's Medical Assistance Program shall have claims resulting from prescriptions paid for by the program.*

*(a.2) Drug utilization review system.—The department shall ensure that a state-of-the-art therapeutic drug utilization review system is established to monitor and correct misutilization of drug therapies.*

(b) Reduced assistance.—Any eligible claimant **[not otherwise qualified for payment of drugs under any public assistance program]** whose prescription drug costs are covered in part by any other plan of assistance or insurance may be required to receive reduced assistance under the provisions of this act at the discretion of the department.

(c) Rebates for expenses prohibited.—A system of rebates or reimbursements to the **[participant for pharmaceutical expenses]** *claimant for prescription drugs* shall be prohibited.

(d) Request for proposal.—The department shall prepare a request for proposal for the purpose of providing pharmaceutical assistance for the elderly within this Commonwealth. The request for proposal shall require private contractors to submit a three-year proposal not to exceed $300,000,000. Upon the adoption of the General Fund Budget, the Department of Revenue shall *be authorized to* transmit the appropriated funds in the State Lottery Fund to the State Treasurer to be deposited in the Pharmaceutical Assistance Contract for the Elderly Fund **[to]**. *This fund shall consist of appropriations and interest and shall* be created by the State Treasurer to fund the operations of the program *by the department and the private contractor*. Funds not expended in the fiscal year in which they were appropriated shall not lapse and be available for use in the next fiscal year.

*(d.1) Additional requests for proposals.—To provide for the continued operation of the program, the department shall prepare, as needed, requests for proposals in addition to that set forth in subsection (d), for the purpose of providing pharmaceutical assistance for the elderly within this Commonwealth. A request for proposal shall require potential private contractors to submit a proposal for a period of time and with monetary limitations as determined by the department. Upon the enactment of an appropriation from the State Lottery Fund, the Department of Revenue shall be authorized to transmit the appropriated amount to the State Treasurer to be deposited in the Pharmaceutical Assistance Contract for the Elderly Fund. Funds not expended in the fiscal year in which they were appropriated shall not lapse and shall be available for use in the next fiscal year.*

(e) Program criteria.—The program shall include the following criteria:

(1) Participating pharmacies are to be paid within 21 days of the contracting firm receiving the appropriate substantiation of the transaction. Pharmacies shall be entitled to interest for payment not made within the 21-day period at a rate approved by the Pharmaceutical Assistance Review Board.

(2) Collection of the copayment by pharmacies shall be mandatory.

(3) Senior citizens participating in the program are not required to maintain records of each transaction.

(4) A system of rebates or reimbursements to **[the participant]** ***eligible claimants*** for pharmaceutical expenses shall be prohibited.

(5) The system established shall include a participant copayment schedule of $4 for each prescription for the first year of the contract. The copayment shall increase or decrease on the annual basis by the average percent change of ingredient costs for all prescription drugs plus a differential to raise the copayment to the next highest 25¢ increment. In addition, the department may approve a request for increase or decrease in the level of copayment based upon the financial experience and projections of the program and after consultation with the Pharmaceutical Assistance Review Board. The department is prohibited from approving adjustments to the copayment on more than a semiannual basis.

(6) The program shall consist of payments to pharmacies on behalf of eligible claimants for the average wholesale cost of **[legend]** drugs, insulin, insulin syringes and insulin needles which exceed the copayment **[and]** ***plus*** a dispensing fee of at least $2.50 or the dispensing fee required by the Department of Welfare under its Medical Assistance Program under the act of June 13, 1967 (P.L.31, No.21), known as the Public Welfare Code, whichever is greater. **[In no case shall the Commonwealth be charged more than the price of the drug at the particular pharmacy on the date of the sale. For the purpose of this act, the eligible claimant shall be liable to pay the difference between the brand name drug and the generically equivalent drug as approved under the provisions of the act of November 24, 1976 (P.L.1163, No.259), referred to as the Generic Equivalent Drug Law. Only the physician may prescribe a nongeneric medication.]**

***(6.1) The average wholesale cost shall be based on a list of package sizes to be established by the department. The list shall reflect the average wholesale cost of drugs based on the package size listed in the February 1984 "Yellow Book" distributed by the Health Care Financing Administration for the drugs contained on that list. The Department of Aging shall have the authority to change the package size of drugs on that list and to add drugs and package sizes to that list, with the review and approval of the Pharmaceutical Assistance Review Board. Changes to the list shall take effect upon publication in the Pennsylvania Bulletin. The department shall have the authority to reimburse based upon the package sizes established in this paragraph.***

***(6.2) In no case shall the Commonwealth be charged more than the price of the drug at the particular pharmacy on the date of the sale.***

*(6.3) For purposes of this act, the eligible claimant shall be liable to pay a fixed differential whenever a more expensive brand name drug is requested by the claimant when the physician permitted substitution of a less expensive generically equivalent drug approved under the provisions of the act of November 24, 1976 (P.L.1163, No.259), referred to as the Generic Equivalent Drug Law.*

*(6.4) The differential will be charged regardless of the availability of a less expensive generic equivalent in the providing pharmacy. In no case will the claimant bear the cost of the differential when the generic equivalent is not available.*

*(6.5) The department shall establish a pharmacist consultation reimbursement program for a period of not less than six months, following which the department may continue or discontinue the program. This program shall provide an additional $1 supplemental dispensing fee whenever a pharmacy's documented intervention resulted in a physician changing a prescription for a more expensive brand name product to a prescription allowing substitution of a less expensive generically equivalent drug. This supplemental dispensing fee shall provide the only exception to paragraph (6.3).*

(7) **[Prescription benefits for any single prescription shall be limited to a 30-day supply of the prescription drug or 100 doses, whichever is less, except that in the case of acute drugs the limitation shall be a 15-day supply.]** *Prescription benefits for any single prescription shall be limited to a 30-day supply of the prescription drug or 100 units, whichever is less, except that, in the case of diagnosis for acute conditions, the limitation shall be a 15-day supply.*

**[(8) Experimental drugs are to be excluded from the program.]**

*(8) The department may establish a restricted formulary of the drugs which will not be reimbursed by the program. This formulary shall include only experimental drugs and drugs on Drug Efficacy Study Implementation List prepared by the Health Care Finance Administration. A medical exception may be permitted by the department for reimbursement of a drug on the Drug Efficacy Study Implementation List upon declaration of its necessity on the prescription by the treating physician; except that, for DESI drugs for which the FDA has issued a Notice for Opportunity Hearing (NOOH) for the purpose of withdrawing the New Drug Application approved for that drug, reimbursement coverage shall be discontinued under the provisions of this act.*

(9) The department may not enter into a contract with a private contractor for an exclusive mail order system for the delivery of prescription drugs under this program. Only mail order pharmacy services provided by pharmacies which are licensed by the Commonwealth and which have their principal place of business within this Commonwealth may participate as providers under the program. Within a period of six months following the effective date of this amendatory act, the department shall develop and promulgate specific regulations governing the practice of mail order pharmacy and other enrolled providers to include the following minimum stan-

dards of practice to ensure the health, safety and welfare of program participants:

(i) The appropriate method or methods by which such pharmacies shall verify the identity of the program recipient and the authenticity of prescriptions received.

(ii) The appropriate method or methods by which such pharmacies shall mail or deliver prescription drugs to program recipients ensuring, to the maximum extent possible, that the intended program recipient is the actual ultimate recipient of any prescription dispensed by such pharmacies.

(iii) The appropriate method or methods by which such pharmacies shall communicate with program participants in emergency situations.

(10) The program must be in place and operational within 90 days of the effective date of the contract.

***(11) For-profit third party insurers and not-for-profit prescription plans shall reimburse the department for any payments made to a providing pharmacy on behalf of a claimant covered by such a third party.***

***(12) Any health care professional rendering service as a member of a utilization review committee for this program shall not be liable for any civil damages as a result of any acts or omissions in rendering the service as a member of any such committee except any acts or omissions intentionally designed to harm or any grossly negligent acts or omissions which result in harm to the person receiving such service.***

(f) Reports by department.—The department shall maintain monthly statistical records on the program to effectively determine the cost of the program, level of participation and any patterns of unusual drug usage. Based on this information, the department shall submit a report every **[three]** ***six*** months to the Aging and Youth Committee in the Senate, the Health and Welfare Committee in the House and the Pharmaceutical Assistance Review Board. The **[quarterly]** ***semiannual*** report shall contain, but is not limited to, all information relating to the number of persons served by the program, their counties of residence, a breakdown of the numbers and kinds of pharmaceuticals used, the cost of prescriptions and an estimate of actual expenses incurred by pharmacists participating in the program. ***The department shall issue a report on the effectiveness of the cost containment strategies contained within this act to the General Assembly within 18 months of the effective date of this act.***

(g) Adjustments to program.—The department is authorized to enter into discussions with the private contractor pursuant to section 6(c).

Section 3. Sections 6(c) and 7(a) of the act are amended to read:

Section 6. Pharmaceutical Assistance Review Board.

* * *

(c) Review.—Using the **[quarterly]** ***semiannual*** reports submitted by the department pursuant to section 4(f) and other appropriate data sources, the board **[will]** ***shall*** conduct a **[quarterly]** ***semiannual*** review. The board shall develop recommendations concerning any changes in the level of copayment or in the level of fees paid to participating pharmacists. The board may also

recommend other changes in the structure of the program and direct the department to enter into discussions with the private contractor concerning amendments to the contract. The copayment schedule shall only be adjusted on a semiannual basis.

Section 7. Penalties.

**[(a) Criminal penalties.—Any person who submits a false or fraudulent claim under this act, or who aids or abets another in the submission of a false or fraudulent claim, or who is eligible under a private, State or Federal program for prescription assistance and who claims or receives duplicative benefits hereunder or who otherwise violates any provisions of this act, commits a misdemeanor of the third degree.]**

***(a) Prohibited acts and criminal penalties.—It shall be unlawful for any person to submit a false or fraudulent claim or application under this act; to aid or abet another in the submission of a false or fraudulent claim or application; to receive benefits or reimbursement under a private, State or Federal program for prescription assistance and claim or receive duplicative benefits hereunder; to solicit, receive, offer or pay any kickback, bribe or rebate, in cash or in-kind, from or to any person in connection with the furnishing of services under this act; or to otherwise violate any provision of this act. Any person who commits a prohibited act shall be charged with a criminal offense pursuant to the provisions of Title 18 of the Pennsylvania Consolidated Statutes (relating to crimes and offenses).***

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Section 4. This act shall take effect immediately.

APPROVED—The 30th day of June, A. D. 1987.

ROBERT P. CASEY