

No. 1983-63

AN ACT

HB 6

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.

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

Section 1. Short title.

This act shall be known and may be cited as the Pharmaceutical Assistance Contract for the Elderly Act.

Section 2. Legislative findings.

Finding that an increasing number of the Commonwealth's elderly citizens who are living on fixed incomes are experiencing difficulties in meeting the costs of life-sustaining prescription drugs, the General Assembly, in its responsibilities to provide for the health, welfare and safety of its residents, hereby establishes a limited State pharmaceutical assistance program for the elderly.

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:

“Board.” The Pharmaceutical Assistance Review Board.

“Department.” The Department of Aging.

“Eligible claimant.” A resident of the Commonwealth 65 years of age and over, whose annual income is less than the maximum annual income, and who is not otherwise qualified for public assistance under the act of June 13, 1967 (P.L.31, No.21), known as the Public Welfare Code.

“Income.” All income from whatever source derived, including but not limited to salaries, wages, bonuses, commissions, income from self-employment, alimony, support money, cash public assistance and relief, the gross amount of any pensions or annuities including railroad retirement benefits, all benefits received under the Federal Social Security Act (except Medicare benefits), all benefits received under State unemployment insurance laws and veterans' disability payments, all interest received from the Federal Government or any state government, or any instrumentality or political subdivision thereof, realized capital gains, rentals, workmen's compensation and the gross amount of loss of time insurance benefits, life insurance benefits and proceeds, except the first \$5,000 of the total of death benefits payments, and gifts of cash or property, other than transfers by gift between members of a household, in excess of a total value of \$300, but shall not include surplus food or other relief in kind supplied by a government agency or property tax rebate.

“Maximum annual income.” Annual income as determined by the department. Such amount shall not exceed \$9,000 in the case of single persons nor \$12,000 in the case of the combined annual income of married persons.

“Pharmacy.” A pharmacy licensed by the Commonwealth.

“Prescription drug.” All legend drugs, 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.

“Program.” The pharmaceutical assistance contract for the elderly as established by this act.

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

(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 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 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 be created by the State Treasurer to fund the operations of the program. 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.

(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 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 a dispensing fee of at least \$2.50. 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.

(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.

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

(9) A system of mail order delivery for prescriptions shall be prohibited under this program.

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

(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 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 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.

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

Section 5. Contract.

The department is authorized to enter into a contract providing for prescription drugs to eligible persons pursuant to this act. The department shall

select a proposal that includes, but is not limited to, the criteria set forth in section 4.

Section 6. Pharmaceutical Assistance Review Board.

(a) Establishment.—A Pharmaceutical Assistance Review Board shall be established to ensure that the program is providing and continues to provide the assistance intended in a fiscally responsible manner without excessively hampering the pharmaceutical industry.

(b) Composition.—The board shall be comprised of the following seven persons:

(1) The Secretary of Aging, who shall serve as its chairman.

(2) The Secretary of Revenue.

(3) The Secretary of Health.

(4) Four public members, one appointed by the President pro tempore of the Senate, one appointed by the Minority Leader of the Senate, one appointed by the Speaker of the House of Representatives and one appointed by the Minority Leader of the House of Representatives. Those appointed shall include two senior citizens and two representatives of the pharmaceutical industry, at least one of whom is a practicing Pennsylvania pharmacist.

(c) Review.—Using the quarterly reports submitted by the department pursuant to section 4(f) and other appropriate data sources, the board will conduct a quarterly 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.

(b) Suspension of license.—Any provider who has been found guilty under this act shall be subject to a suspension of his license to practice for a period of one year.

(c) Repayment of gain.—Any provider or recipient who is found guilty under this act is subject to repay three times the value of the material gain he received.

Section 8. Implementation of act.

Implementation of the provisions of this act shall be in accordance with the following time-frame guidelines:

(1) The department shall publish its request for proposal in the Pennsylvania Bulletin within 60 days of the effective date of this act.

(2) The deadline for submitting bids on the proposal shall be 60 days from the date of publication.

(3) The department must make a selection and enter into a contract within 30 days of the close of bids.

Section 9. *Effective date.*

This act shall take effect immediately.

APPROVED—The 4th day of November, A. D. 1983.

DICK THORNBURGH