No. 1996-134

AN ACT

HB 544

Amending the act of August 26, 1971 (P.L.351, No.91), entitled "An act providing for a State Lottery and administration thereof; authorizing the creation of a State Lottery Commission; prescribing its powers and duties; disposition of funds; violations and penalties therefor; exemption of prizes from State and local taxation and making an appropriation," transferring provisions relating to the State Lottery Fund; providing for pharmaceutical assistance for the elderly, for transportation assistance to the elderly and for pharmaceutical purchasing; conferring powers and duties upon the Department of Aging, the Department of Revenue and the Department of Transportation; imposing penalties; making editorial changes; and making repeals.

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

Section 1. Sections 1, 2, 3, 6, 6.1, 7, 8, 9, 9.1, 10, 11, 12, 12.1, 13, 14, 15, 16 and 17 of the act of August 26, 1971 (P.L.351, No.91), known as the State Lottery Law, amended or added October 17, 1980 (P.L.1088, No.184), December 15, 1982 (P.L.1288, No.291), December 14, 1992 (P.L.868,

No.138) and May 20, 1993 (P.L.27, No.8), are amended and chapter headings and sections are added to read:

CHAPTER 1
GENERAL PROVISIONS

[Section 1. Short Title.—This act shall be known and may be cited as the "State Lottery Law."]
Section 101. Short title.
This act shall be known and may be cited as the State Lottery Law.

CHAPTER 3
STATE LOTTERY

[Section 2. Statement of Purpose.—This act is enacted to]
Section 301. Statement of purpose.
This chapter is enacted to establish a lottery to be operated by the State, the net proceeds of which are to be used after June 30, 1972, for the purposes of providing property tax relief for the elderly for taxes paid in 1971 and thereafter to persons **[sixty-five]** *65* years of age or older and for providing certain free fixed route local transit services to persons **[sixty-five]** *65* years of age or older and reduced fare on group ride transit service to persons **[sixty-five]** *65* years of age or older. It is further intended to provide a means through which to curb illegal gambling operations in Pennsylvania.

[Section 3. Definitions.—As used in this act:

(2) "Division" shall mean the Division of the State Lottery created by this act.

(3) "Lottery" or "State lottery" shall mean the lottery established and operated pursuant to this act.

(4) "Director" shall mean the Director of the Division of the State Lottery.

(5) "Secretary" shall mean the Secretary of Revenue.]
Section 302. Definitions.
The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Director." The Director of the Division of the State Lottery.

"Division." The Division of the State Lottery created by this chapter.

"Lottery" or "State Lottery." The lottery established and operated under this chapter.

"Secretary." The Secretary of Revenue of the Commonwealth.

[Section 6. Powers and Duties of the Secretary of Revenue.—(a) In]
Section 303. Powers and duties of secretary.
(a) Powers and duties enumerated.—In addition to the powers and duties provided by law and **["The Administrative Code of 1929,"]** ***the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929,*** the **[Secretary of Revenue]** *secretary* shall have the power and it shall be his

duty to operate and administer the lottery, and to promulgate rules and regulations governing the establishment and operation thereof, including, but not limited to:

(1) The type of lottery to be conducted.

(2) The price, or prices, of tickets or shares in the lottery.

(3) The numbers and sizes of the prizes on the winning tickets or shares.

(4) The manner of selecting the winning tickets or shares.

(5) **[The]** ***(i) Except as provided in subparagraph (ii), the*** manner of payment of prizes to the holders of winning tickets or shares.

(ii) For new nonmultistate on-line, pari-mutuel games with prizes of $1,000,000 or more and payable in more than one installment, the player shall have the option at the time of purchase to accept, as full payment of the player's share of the prize won, a lump sum of the prize money allocated to the first place prize category, divided equally by the number of tickets determined by the lottery to be entitled to claim a first place prize, provided that the player specified the lump-sum option at the time of purchase and received a mark on the ticket confirming such request. In cases where the prize pool for the first place prize is not sufficient to fund the guaranteed lump-sum prize as announced by the lottery, the prize pool shall be increased as necessary by the lottery. Players shall be bound by their prewinning choice.

(6) The frequency of the drawings or selections of winning tickets or shares, without limitation.

(7) Without limit as to number, the type or types of locations at which tickets or shares may be sold.

(8) The method to be used in selling tickets or shares.

(9) The licensing of agents to sell tickets or shares provided that no person under the age of **[twenty-one]** ***21*** shall be licensed as an agent.

(10) The manner and amount of compensation, if any, to be paid licensed sales agents necessary to provide for the adequate availability of tickets or shares to prospective buyers and for the convenience of the public.

(11) The apportionment of the total revenues accruing from the sale of lottery tickets or shares and from all other sources among:

(i) the payment of prizes to the holders of winning tickets or shares;

(ii) the payment of costs incurred in the operation and administration of the lottery, including the expenses of the division and the costs resulting from any contract or contracts entered into for promotional, advertising or operational services or for the purchase or lease of lottery equipment and materials; ***and***

[(iii) for the repayment of the moneys appropriated to the State Lottery Fund pursuant to section 16 of this act; and]

(iv) for property tax relief and free or reduced fare transit service for the elderly as provided in section **[12 of this act: Provided, however, That no]** ***311. No*** less than **[thirty per cent]** ***30%*** of the total revenues accruing from the sale of lottery tickets or shares shall be dedicated to **[subclause (iv) above]** ***this subparagraph.***

(11.1) The production and merchandising of promotional items for the lottery.

(12) Such other matters necessary or desirable for the efficient and economical operation and administration of the lottery and for the convenience of the purchasers of tickets or shares and the holders of winning tickets or shares.

(13) The performance of the powers and duties heretofore vested in the State Lottery Commission.

(b) **[To]** ***Reports.—The secretary shall*** report monthly to the Governor and the Legislature the total lottery revenues, prize disbursements and other expenses for the preceding month, and **[to]** ***shall*** make an annual report, which shall include a full and complete statement of lottery revenues, prize disbursements and other expenses, to the Governor and the Legislature, and including such recommendations for changes in this **[act]** ***chapter*** as the secretary deems necessary or desirable.

[Section 6.1. Commercial Advertising.—(a) The secretary may] ***Section 304. Commercial advertising.***

(a) General rule.—The secretary may enter into contracts with persons, associations or corporations that provide for the placement of commercial advertisements on tickets or shares.

(b) ***Contracts.***—The secretary may enter into the contracts only after completion of the bidding procedure contained in subsection (c).

(c) ***Bidding procedures.—***

(1) The secretary shall, not less than six weeks prior to the date set for opening bids or proposals to place advertisements on the tickets or shares, advertise the opening of proposals for at least three days, the first and last publication to be at least ten days apart, in not fewer than six nor more than **[twelve]** ***12*** newspapers of extensive general circulation in different parts of this Commonwealth. The advertisements shall invite proposals for the placement of commercial advertisements on the tickets or shares, shall direct potential bidders to include with their proposals a specimen advertisement and shall give notice of the time and place where the proposals will be received and when they will be opened.

(2) All proposals shall be delivered to the secretary on or before the hour designated in the invitation to bid, on the day set by the secretary, following the date of the last advertisement, and each bid shall be in duplicates, one of which shall be marked "Duplicate Bid." Each bid shall be enclosed in an envelope, securely sealed, and shall be mailed or delivered to the secretary who shall retain all envelopes unopened until the time fixed for the opening thereof.

(3) The secretary shall, on the date fixed for opening of bids, at the hour designated in the invitation to bid, open and publish the proposals and, as soon thereafter as practicable, award the contract to the highest responsible bidder. The secretary shall have the right to reject any or all bids. The bids, when opened, shall be tabulated and shall be subject to examination by bidders. A record of all bids shall be made by the secretary in a book kept for that purpose.

(4) When no proposal has been received or if for any reason the secretary rejects all proposals, the secretary may advertise again for proposals, giving at least **[fifteen]** ***15*** days' notice of the time of receiving the same, which proposals shall be opened, awarded and approved in like manner as the initial bids.

(5) The secretary shall have the discretion to refuse to accept any advertisement that is inappropriate or offensive or displays poor taste. Advertisements for tobacco products or for alcoholic beverages shall not be accepted.

(d) ***Disposition of revenues.***—All revenues derived from contracts entered into under this section shall be deposited in the State Lottery Fund.

(e) ***Regulations.***—The secretary may promulgate rules and regulations to implement the provisions of this section.

(f) ***Definition.***—As used in this section, the term "tickets or shares" shall not include instant game tickets.

[Section 7. Lottery Sales Agents; Qualifications; Prohibitions.—(a) No license as an agent to sell lottery]

Section 305. Lottery sales agents.

(a) Licensing.—No license as an agent to sell lottery tickets or shares shall be issued to any person to engage in business exclusively as a lottery sales agent. Before issuing such license the secretary shall consider such factors as:

(1) The financial responsibility and security of the person and his business or activity**[;]**.

(2) The accessibility of his place of business or activity to the public**[;]**.

(3) The sufficiency of existing licenses to serve the public convenience**[; and]**.

(4) The volume of expected sales.

[For the purposes of this section, the term "person" shall be construed to mean and include an individual, association, corporation, club, trust, estate, society, company, joint-stock company, receiver, trustee, assignee, referee, or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals. "Person" shall also be construed to mean and include all departments, commissions, agencies and instrumentalities of the State, including counties and municipalities and agencies and instrumentalities thereof.]

(b) ***Approval of applicant.***—If the secretary shall find that the experience, character and general fitness of the applicant are such that the participation of such person as a lottery sales agent will be consistent with the public interest, convenience and necessity, it may thereupon grant a license.

Without limiting the generality of the foregoing, the secretary may refuse to issue a license pursuant to this section, or may suspend or revoke a license so issued if it shall find that the applicant or licensee:

(1) Has been convicted of a crime involving moral turpitude.

(2) Has engaged in bookmaking or other form of illegal gambling.

(3) Has been found guilty of any fraud or misrepresentation in any connection.

(4) Has violated any rule, regulation or order of the secretary.

(c) ***Denial of license.***—The secretary may refuse to grant a license or may suspend or revoke a license issued pursuant to this section to a corporation, if it shall determine that:

(1) Any officer, director, member or stockholder of such corporation applying for a license or of any corporation which owns stock in or shares in the profits, or participates in the management of the affairs of such applicant:

(i) has been convicted of a crime involving moral turpitude**[**,**]**;

(ii) has engaged in bookmaking or other forms of illegal gambling**[**,**]**;

(iii) has been found guilty of any fraud or misrepresentation in any connection**[**,**]**; or

(iv) has violated any rule, regulation or order of the secretary.

(2) The experience, character, or general fitness of any officer, director, or stockholder of any of the aforesaid corporations is such that the participation of such person as a lottery sales agent would be inconsistent with the public interest, convenience or necessity, but if the secretary determines that the interest of any stockholder referred to in this **[clause or in clause (1) of this subsection]** ***paragraph or in paragraph (1)*** is sufficient, in the opinion of the secretary, to affect adversely the conduct of a lottery sales agency by such corporation in accordance with the provisions of this **[act]** ***chapter***, the secretary may disregard such interest in determining whether or not to grant a license to such corporation.

(3) The applicant is not the owner or the lessee of the business at which it will conduct a lottery sales agency pursuant to the license applied for, or that any person, firm, association, or corporation other than the applicant shares, or will share, in the profits of the applicant, other than by dividends as a stockholder, or participates, or will participate, in the management of the affairs of the applicant.

(d) ***Temporary license.***—Pending final determination of any question under this section, the secretary may issue a temporary license upon such

terms and conditions as it may deem necessary, desirable or proper to effectuate the provisions of this [act] *chapter*.

(e) *Resurvey.*—Any person who has a pending application for a lottery machine and is currently engaged in the sale of out-of-State lottery tickets may submit a written request to the Department of Revenue for a resurvey. This resurvey shall be completed by the department within [ninety] *90* days of receipt of the request.

(f) Definition.—As used in this section, the term "person" means and includes an individual, association, corporation, club, trust, estate, society, company, joint-stock company, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals. The term shall also mean and include all departments, commissions, agencies and instrumentalities of the State, including counties and municipalities and agencies and instrumentalities thereof.

[Section 8. Assignability of Prizes Drawn.—No right of any person to a prize drawn shall be assignable, except that payment of any prize drawn may be paid to the estate of a deceased prize winner, and, except that any person pursuant to an appropriate judicial order may be paid the prize to which the winner is entitled. The secretary shall be discharged of all further liability upon payment of a prize pursuant to this section.]

Section 306. Assignability of prizes drawn.

(a) Assignability.—The right of any person to a prize drawn shall be assignable under the following limited circumstances:

(1) Payment of any prize drawn may be paid to the estate of a deceased prize winner.

(2) Payment of any prize drawn may be made to any person pursuant to an appropriate judicial order.

(3) Payment of any prize drawn may be made to any person pursuant to a voluntary assignment of the right to receive future prize payments, in whole or in part, if the assignment is made to a person or entity designated pursuant to an appropriate judicial order of the court of common pleas located in either the judicial district where the assignor resides or where the division's headquarters are located. Under this paragraph, the court shall issue an order approving the assignment and directing the secretary to pay the assignee all future prize payments, in whole or in part, if:

(i) the assignment is in writing, executed by the assignor and subject to the laws of this Commonwealth;

(ii) the assignor provides a sworn affidavit to the court attesting that the assignor is of sound mind, is not acting under duress, has been advised regarding the assignment by his or her own independent legal counsel and understands and agrees that, with regard to the assigned payments, the Commonwealth and the secretary shall have

no further liability or responsibility to make said payments to the assignor; and

(iii) the proposed assignment does not include or cover payments or portions of payments alleged to be subject to offset under judicial order, unless appropriate provision is made in the order to satisfy the obligations giving rise to the claim for offset, or to offset under any other statute.

(b) Discharge of secretary.—The secretary shall be discharged of all further liability upon payment of a prize pursuant to this section.

(c) Enforcement.—Soliciting or offering rights to lottery prizewinnings, either by assignment or through pledge as collateral for a loan, shall not be deemed selling or offering for sale lottery tickets or shares under this act. Selling or offering for sale assigned or pledged lottery prizewinnings shall not be deemed selling or offering for sale an interest under section 307.

(d) Fees.—The secretary is authorized to establish a reasonable fee to defray any administrative expenses associated with assignments made pursuant to this section, including the cost to the Commonwealth of any processing fee that may be imposed by a private annuity provider. The fee amount shall reflect the direct and indirect costs associated with processing the assignments.

(e) Discharge of Commonwealth.—Upon a voluntary assignment pursuant to appropriate judicial order under subsection (a)(3) of payments due to a prizewinner under a private annuity policy that has been purchased by the lottery for the benefit of a prizewinner, the Commonwealth and the secretary shall be discharged from any and all liability for the payments or portions thereof assigned, and, as to the payments or portions thereof assigned, the assignee shall have recourse only against the private annuity provider and its guarantors and shall have no further recourse against the Commonwealth.

(f) Assignment limitation.—Notwithstanding any other provision of this section, no prizewinner shall have the right to assign prize payments upon:

(1) The issuance by the United States Internal Revenue Service (IRS) of a technical rule letter, revenue ruling or other public ruling of the IRS in which the IRS determines that, based upon the right of assignment provided in this act, a Pennsylvania lottery prizewinner who does not assign any prize payments pursuant to subsection (a)(3) would be subject to an immediate income tax liability for the value of the entire prize rather than annual income tax liability for each installment when paid.

(2) The issuance by a court of competent jurisdiction of a published decision holding that, based upon the right of assignment provided in this act, a Pennsylvania lottery prizewinner who does not assign any prize payments pursuant to subsection (a)(3) would be subject to an

immediate income tax liability for the value of the entire prize rather than annual income tax liability for each installment when paid.

(g) Filing of letter decision.—Upon receipt of a letter or ruling from the IRS or a published decision of a court of competent jurisdiction, as specified in subsection (f), the executive director shall immediately file a copy of that letter, ruling or published decision with the Secretary of State. Immediately upon the filing by the director of a letter, ruling or published decision with the Secretary of State, a prizewinner shall be ineligible to assign a prize pursuant to subsection (a)(3).

[Section 9. Sales of Tickets in Excess of Regulated Price; Sales by Non-licensed Persons; Penalties.—(a) No person shall]

Section 307. Ticket sales.

(a) Prices.—No person shall sell, resell or engage in the business of reselling lottery tickets or shares at a price greater than that fixed by rule or regulation of the department. Price shall include any fee associated with the acquisition or transportation of lottery tickets or shares.

(b) *Construction.*—No person other than a licensed lottery sales agent shall sell lottery tickets or shares, except that nothing in this section shall be construed to prevent any person from giving lottery tickets or shares to another as a gift.

(c) *Lotteries of other states.*—Except as provided in this **[act]** *chapter*, no person shall engage in the sale or offering for sale within this Commonwealth of any interest in a lottery of another state or government whether or not such interest is an actual lottery ticket, receipt, contingent promise to pay, order to purchase or other record of such interest.

(d) *Penalty.*—Any person convicted of violating this section shall be guilty of a misdemeanor and upon conviction thereof, shall be sentenced to pay a fine **[not exceeding two thousand dollars ($2,000)]** *of not more than $2,000.*

[Section 9.1. Compact to Sell Tickets.—The secretary shall]

Section 308. Compact to sell tickets.

The secretary shall enter into a compact with any other states that permit sale of Pennsylvania lottery tickets within their borders to sell those states' lottery tickets within this Commonwealth.

[Section 10. Sales to Certain Persons Prohibited; Penalty.—No]

Section 309. Certain sales prohibited.

(a) Minors.—

(1) No ticket or share shall be sold to any person under **[the age of eighteen years]** *18 years of age*. For the purpose of making a gift, a person **[eighteen]** *18* years of age or older may purchase a ticket or share for the benefit of a person less than that age.

(2) Any agent or **[employe]** *employee* of any agent who knowingly sells a lottery ticket or share to any person under **[the age of eighteen years]** *18 years of age* shall be guilty of a misdemeanor, and upon

conviction thereof, shall be sentenced to pay a fine [**not exceeding five hundred dollars ($500)**] *of not more than $500.*

(b) Certain employees.—No ticket or share shall be sold to and no prize shall be awarded to any officer or [**employe**] *employee* of the [**Division of the State Lottery**] *division* in the Department of Revenue or any spouse, child, brother, sister or parent residing as a member of the same household in the principal place of abode of any of the foregoing persons.

[**Section 11. Other Laws Inapplicable.—No other law providing**]
Section 310. Other laws inapplicable.

No other law providing any penalty or disability for the sale of lottery tickets or shares or any acts done in connection with a lottery shall apply to the sale of tickets or shares or acts performed pursuant to this [**act**] *chapter.*

[**Section 12. Disposition of Funds from Sale of Tickets or Shares.—(a) All moneys received from the operation of the**]
Section 311. Disposition of funds.

(a) State Lottery Fund.—All moneys received from the operation of the State lottery shall be deposited in a State Lottery Fund which is hereby created. Such moneys shall be used to the extent necessary for the payment of lottery prizes but the amount so used shall not be less than [**forty per cent**] *40%* of the amount of which tickets or shares have been sold. All payments of lottery prizes and for expenses of operation of the lottery shall be made as provided by law. All moneys remaining after payment of prizes and operating expenses shall remain in the State Lottery Fund and shall be allocated for the purpose of providing property tax relief for the elderly for taxes paid in 1971 and thereafter pursuant to the provisions of the act of March 11, 1971 (P.L.104, No.3), known as the [**"Senior Citizens Property Tax or Rent Rebate and Older Persons Inflation Needs Act,"**] *Senior Citizens Rebate and Assistance Act,* and for the purpose of providing free or reduced fare transit service for the elderly pursuant to [**the act of January 22, 1968 (P.L.42, No.8), known as the "Pennsylvania Urban Mass Transportation Assistance Law of 1967,"**] *Chapter 9* and the act of February 11, 1976 (P.L.14, No.10), known as the ["]Pennsylvania Rural and Intercity Common Carrier Surface Transportation Assistance Act.["] In the event sufficient funds are not available from the lottery receipts to meet the requirements of the [**act of March 11, 1971 (P.L.104, No.3), known as the "Senior Citizens Property Tax or Rent Rebate and Older Persons Inflation Needs Act,"**] *Senior Citizens Rebate and Assistance Act* or for providing free or reduced fare transit service for the elderly under [**the act of January 22, 1968 (P.L.42, No.8), known as the "Pennsylvania Urban Mass Transportation Assistance Law of 1967,"**] *Chapter 9* and the [**act of February 11, 1976 (P.L.14, No.10), known as the "**]Pennsylvania Rural and Intercity Common Carrier Surface Transportation Assistance Act,["] additional funds to fulfill these obligations[,] shall be appropriated from the General Fund for this purpose.

(b) *Appropriations.*—The moneys in said State Lottery Fund shall be appropriated only:

(1) For the payment of prizes to the holders of winning lottery tickets or shares[;].

(2) For the expenses of the division in its operation of the lottery[;].

(3) For property tax relief and free or reduced fare transit service for the elderly as provided under **[section 12 of this act; and**

(4) For transfer to the General Fund through June 30, 1972, and for the repayment to the General Fund of the amount appropriated to the fund pursuant to section 16 of this act] ***subsection (a).***

[Section 12.1. Transportation Assistance Grant.—For the fiscal year 1982-1983 four million one hundred thousand dollars ($4,100,000) is hereby appropriated from the Lottery Fund to the Department of Aging for transportation grants to area agencies on aging to purchase, replace, lease, maintain, operate or contract for the operation of vehicles or equipment for use in senior citizens transportation. The total amount to be granted to each area agency on aging shall be determined by the following formula:

(two million fifty thousand dollars X a/b) +

(two million fifty thousand dollars X c/d)

"a" equals the number of elderly poor persons residing in the area served by the area agency on aging.

"b" equals the number of elderly poor persons in Pennsylvania.

"c" equals the number of square miles of the area served by the area agency on aging.

"d" equals the number of square miles in Pennsylvania.

The grant shall be in addition to those authorized under and may be used in conjunction with section 406 of the act of January 22, 1968 (P.L.42, No.8), known as the "Pennsylvania Urban Mass Transportation Law."

Section 13. Exemption of Lottery Prizes from State and Local Taxation.—No State or local taxes of any kind whatsoever shall]

Section 312. Tax exemption.

No State or local taxes of any kind whatsoever shall be imposed upon the proceeds from a prize awarded by the State lottery.

[Section 14. Unclaimed Prize Money.—Unclaimed prize money on]

Section 313. Unclaimed prize money.

Unclaimed prize money on a winning lottery ticket or share shall be retained by the secretary for payment to the person entitled thereto for one year after the drawing in which the prize was won. If no claim is made within such period, the prize money shall be paid into the State Lottery Fund and used for purposes as otherwise herein provided.

[Section 15. Bank Deposits and Control of Lottery Transactions.—The secretary may, in his discretion, require any]

Section 314. Deposits and transactions.

The secretary may, in his discretion, require any or all lottery sales agents to deposit to the credit of the State Lottery Fund in banks, designated by the State Treasurer, all moneys received by such agents from the sale of lottery tickets or shares, less the amount, if any, retained as compensation for the sale of the tickets or shares, and to file with the secretary or his designated agents reports of their receipts and transactions in the sale of lottery tickets in such form and containing such information as he may require. The secretary may make such arrangements for any person, including a bank, to perform such functions, activities or services in connection with the operation of the lottery as he may deem advisable pursuant to this **[act]** *chapter* and the rules and regulations of the department, and such functions, activities or services shall constitute lawful functions, activities and services of such person.

[Section 16. Appropriation.—There is hereby appropriated the sum of one million dollars ($1,000,000), or so much thereof as is necessary for the establishment of the State lottery and the Division of the State Lottery in the Department of Revenue. The Department of Revenue shall reimburse the General Fund from receipts from sale of lottery tickets or shares the actual amount of money expended from said appropriation within one year of the date of the first lottery drawing.

Section 17. Effective Date.—This act shall take effect immediately.]

Section 2. The act is amended by adding chapters to read:

CHAPTER 5
PHARMACEUTICAL ASSISTANCE FOR THE ELDERLY

Section 501. 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 the residents of this Commonwealth, hereby continues a limited State pharmaceutical assistance program for the elderly.

Section 502. Definitions.

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

"A-rated generic therapeutically equivalent drug." A drug product that the Commissioner of Food and Drugs of the United States Food and Drug Administration has approved as safe and effective and has determined to be therapeutically equivalent, as listed in "The Approved Drug Products with Therapeutic Equivalence Evaluations" (Food and Drug Administration "Orange Book"), with a specific "A" code designation only.

"Average wholesale cost." The cost of a dispensed drug based upon the price published in a national drug pricing system in current use by the

Department of Aging as the average wholesale price of a prescription drug in the most common package size.

"Average wholesale price." Average wholesale cost.

"Board." The Pharmaceutical Assistance Review Board.

"Department." The Department of Aging of the Commonwealth.

"Eligible claimant." A resident of the Commonwealth for no less than 90 days, who is 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.

"FDA." The United States Food and Drug Administration of the Public Health Service of the Department of Health and Human Services.

"HCFA." The Health Care Financing Administration of the United States.

"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 Social Security Act (49 Stat. 620, 42 U.S.C. § 301 et seq.) (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." For PACE eligibility, the term shall mean annual income which shall not exceed $14,000 in the case of single persons nor $17,200 in the case of the combined annual income of persons married to each other. Persons may, in reporting income to the Department of Aging, round the amount of each source of income and the income total to the nearest whole dollar, whereby any amount which is less than 50¢ is eliminated.

"PACE." The Pharmaceutical Assistance Contract for the Elderly program provided for in this chapter.

"PACENET." The Pharmaceutical Assistance Contract for the Elderly Needs Enhancement Tier provided for in this chapter.

"Pharmacy." A pharmacy licensed by the Commonwealth.

"Prescription drug." All drugs requiring a prescription in this Commonwealth, insulin, insulin syringes and insulin needles. Experimental drugs or drugs prescribed for wrinkle removal or hair growth are prohibited.

"Private contractor." A person, partnership or corporate entity who enters into a contract with the Commonwealth to provide services under the provisions of this chapter.

"Program." The Pharmaceutical Assistance Contract for the Elderly (PACE) and the Pharmaceutical Assistance Contract for the Elderly Needs Enhancement Tier (PACENET) as established by this chapter, unless otherwise specified.

"Provider." A pharmacy or dispensing physician enrolled as a provider in the program.

Section 503. 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.

Section 504. 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.

Section 505. 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.

Section 506. Reduced assistance.

Any eligible claimant 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 chapter.

Section 507. Rebates for expenses prohibited.

A system of rebates or reimbursements to the claimant for prescription drugs shall be prohibited.

Section 508. Request for proposal.

(a) General rule.—The department shall prepare a request for proposal for the purpose of providing pharmaceutical assistance for the elderly within this Commonwealth. 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. 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.

(b) 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 (a), 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.

Section 509. Program generally.

The program shall include the following:

(1) Participating pharmacies shall 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 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 eligible claimants for pharmaceutical expenses shall be prohibited.

(5) PACE shall include a participant copayment schedule for each prescription. The copayment may increase or decrease on an 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 PACE and after consultation with the board. The department is prohibited from approving adjustments to the copayment on more than an annual basis.

(6) The program shall consist of payments to pharmacies on behalf of eligible claimants for 90% of the average wholesale costs of prescription drugs which exceed the copayment, plus a dispensing fee of at least $3.50 or the dispensing fee established by the department by regulation, whichever is greater.

(7) In no case shall the Commonwealth or any person enrolled in the program be charged more than the price of the drug at the particular pharmacy on the date of the sale.

Section 510. Generic drugs.

(a) In general.—Notwithstanding any other statute or regulation, if an A-rated generic therapeutically equivalent drug is available for dispensing to a claimant, the provider shall dispense the A-rated generic therapeutically equivalent drug to the claimant. The department shall not reimburse providers for brand name products except in the following circumstances:

(1) There is no A-rated generic therapeutically equivalent drug available on the market. This paragraph does not apply to the lack of availability of an A-rated generic therapeutically equivalent drug in the providing pharmacy unless it can be shown to the department that the provider made reasonable attempts to obtain the A-rated generic therapeutically equivalent drug or that there was an unforeseeable demand and depletion of the supply of the A-rated generic therapeutically equivalent drug. In either case, the department shall reimburse the provider for 90% of the average wholesale cost plus a dispensing fee based on the least expensive A-rated generic therapeutically equivalent drug for the brand drug dispensed.

(2) An A-rated generic therapeutically equivalent drug is deemed by the department, in consultation with a utilization review committee, to have too narrow a therapeutic index for safe and effective dispensing in the community setting. The department shall notify providing pharmacies of A-rated generic therapeutically equivalent drugs that are identified pursuant to this paragraph on a regular basis.

(3) The Department of Health has determined that a drug shall not be recognized as an A-rated generic therapeutically equivalent drug for purpose of substitution under section 5(b) of the act of November 24, 1976 (P.L.1163, No.259), referred to as the Generic Equivalent Drug Law.

(4) At the time of dispensing, the provider has a prescription on which the brand name drug dispensed is billed to the program by the provider at a usual and customary charge which is equal to or less than the least expensive usual and customary charge of any A-rated generic therapeutically equivalent drug reasonably available on the ~~market to the~~ provider.

(b) Generic not accepted.—If a claimant chooses not to accept the A-rated generic therapeutically equivalent drug required by ~~subsection (a)~~, the claimant shall be liable for the copayment and 70% of the average wholesale cost of the brand name drug.

(c) Generic drugs not deemed incorrect substitution.—The dispensing of an A-rated generic therapeutically equivalent drug in accordance with

this chapter shall not be deemed incorrect substitution under section 6(a) of the Generic Equivalent Drug Law.

(d) Medical exception.—A medical exception process shall be established by the department, which shall be published as a notice in the Pennsylvania Bulletin and distributed to providers and recipients in the program.

Section 511. 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. This limitation shall not apply to topical ointments or gels that are not available in containers which meet the size and supply restrictions set forth in this section.

Section 512. Restricted formulary.

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 the 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 chapter.

Section 513. Mail order system.

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. The department shall develop and promulgate specific regulations governing the practice of mail-order pharmacy and other enrolled providers to include the following minimum standards of practice to ensure the health, safety and welfare of program participants:

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

(2) 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.

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

Section 514. Indication of price.

The retail price of the prescription shall be indicated on the label of the prescription container or furnished by separate receipt.

Section 515. Reimbursement.

For-profit third-party insurers and not-for-profit prescription plans shall be responsible for any payments made to a providing pharmacy on behalf of a claimant covered by such a third party.

Section 516. Nonliability.

(a) Persons rendering service.—Any person 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.

(b) Officer and employees of department.—Any officer or employee of the department 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 or as a result of any decision or action in connection with the program 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.

Section 517. Income verification.

(a) Procedure.—The department shall annually verify the income of eligible claimants. The department shall verify the income of eligible claimants by requiring income documentation from the claimants. An application for benefits under this chapter shall constitute a waiver to the department of all relevant confidentiality requirements relating to the claimant's Pennsylvania State income tax information in the possession of the Department of Revenue. The Department of Revenue shall provide the department with the necessary income information shown on the claimant's Pennsylvania State income tax return solely for income verification purposes.

(b) Information confidential.—It shall be unlawful for any officer, agent or employee of the department to divulge or make known in any manner whatsoever any information gained through access to the Department of Revenue information except for official income verification purposes under this chapter.

(c) Penalty.—A person who violates this act commits a misdemeanor and shall, upon conviction, be sentenced to pay a fine of not more than $1,000 or to imprisonment for not more than one year, or both, together with the cost of prosecution, and, if the offender is an officer or employee of the Commonwealth, he shall be dismissed from office or discharged from employment.

(d) Coordination with Department of Public Welfare.—To the extent possible, the department and the Department of Public Welfare shall coordinate efforts to facilitate the application and enrollment of eligible older people in the Medicaid Healthy Horizons Program by processing these applications at senior citizens centers and other appropriate facilities providing services to the elderly.

Section 518. Contract.

The department is authorized to enter into a contract providing for prescription drugs to eligible persons pursuant to this chapter. The department shall select a proposal that includes, but is not limited to, the criteria set forth in this chapter.

Section 519. The Pharmaceutical Assistance Contract for the Elderly Needs Enhancement Tier.

(a) Establishment.—There is hereby established within the department a program to be known as the Pharmaceutical Assistance Contract for the Elderly Needs Enhancement Tier (PACENET).

(b) PACENET eligibility.—A claimant with an annual income of not less than $14,000 and not more than $16,000 in the case of a single person and of not less than $17,200 and not more than $19,200 in the case of the combined income of persons married to each other shall be eligible for enhanced pharmaceutical assistance under this section. A person may, in reporting income to the department, round the amount of each source of income and the income total to the nearest whole dollar, whereby any amount which is less than 50¢ is eliminated.

(c) Deductible.—Upon enrollment in PACENET, eligible claimants in the income ranges set forth in subsection (b) shall be required to meet an annual deductible in unreimbursed prescription drug expenses of $500 per person. To qualify for the deductible set forth in this subsection the prescription drug must be purchased for the use of the eligible claimant from a provider as defined in this chapter. The department, after consultation with the board, may approve an adjustment in the deductible on an annual basis.

(d) Copayment.—For eligible claimants under this section, the copayment schedule, which may be adjusted by the department on an annual basis after consultation with the board, shall be:

(i) eight dollars for noninnovator multiple-source drugs as defined in section 702; or

(ii) fifteen dollars for single-source drugs and innovator multiple-source drugs as defined in section 702.

Section 520. Board.

(a) Establishment.—The Pharmaceutical Assistance Review Board is continued 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 eight persons:

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

(2) The Secretary of Revenue.

(3) The Secretary of Health.

(4) Five 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, one appointed by the Minority Leader of the House of Representatives and one appointed by the Governor. Those appointed by the legislative officers shall include two senior citizens who have not been a part of the pharmaceutical industry to serve as consumer advocates and two representatives of the pharmaceutical industry, at least one of whom is a practicing Pennsylvania pharmacist. The individual appointed by the Governor must be a physician. A public member who misses two consecutive meetings without good cause acceptable to the chairman shall be replaced by the appointing authority.

(c) Review.—Using the annual report submitted by the department pursuant to section 2102 and other appropriate data sources, the board shall conduct an annual review. The board shall develop recommendations concerning any changes in the level of copayment, deductible or in the level of fees paid to participating pharmacists. The board shall review the department's therapeutic drug utilization review program on an ongoing basis. 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, or the department may enter into such discussion if it deems necessary. The copayment or deductible schedule shall only be adjusted on an annual basis.

(d) Meetings.—The board shall meet at least two times per year.

Section 521. Penalties.

(a) Prohibited acts.—It shall be unlawful for any person to submit a false or fraudulent claim or application under this chapter, including, but not limited to:

(1) aiding or abetting another in the submission of a false or fraudulent claim or application;

(2) receiving benefits or reimbursement under a private, Federal or State program for prescription assistance and claiming or receiving duplicative benefits hereunder;

(3) soliciting, receiving, offering or paying any kickback, bribe or rebate, in cash or in kind, from or to any person in connection with the furnishing of services under this chapter;

(4) engaging in a pattern of submitting claims that repeatedly uses incorrect National Drug Code numbers for the purpose of obtaining wrongful enhanced reimbursement; or

(5) otherwise violating any provision of this chapter.

(b) Civil penalty.—In addition to any appropriate criminal penalty for prohibited acts under this chapter whether or not that act constitutes a crime under 18 Pa.C.S. (relating to crimes and offenses), a provider who violates this section may be liable for a civil penalty in an amount not less than $500 and not more than $10,000 for each violation of this act which shall be collected by the department. Each violation constitutes a separate offense. If the department collects three or more civil penalties against the same provider, the provider shall be ineligible to participate in either PACE or PACENET for a period of one year. If more than three civil penalties are collected from any provider, the department may determine that the provider is permanently ineligible to participate in PACE or PACENET.

(c) Suspension of license.—The license of any provider who has been found guilty under this chapter shall be suspended for a period of one year. The license of any provider who has committed three or more violations of this chapter may be suspended for a period of one year.

(d) Repayment of gain.—Any provider, recipient or other person who is found guilty of a crime for violating this chapter shall repay three times the value of the material gain received. In addition to the civil penalty authorized pursuant to subsection (b), the department may require the provider, recipient or other person to repay up to three times the value of any material gain to PACE or PACENET.

Section 522. Prescription drug education program.

The department, in cooperation with the Department of Health, shall develop and implement a Statewide prescription drug education program designed to inform older adults of the dangers of prescription drug abuse and misuse. The prescription drug education program shall include, but not be limited to, information concerning the following:

(1) The hazards of prescription drug overdose.

(2) The potential dangers of mixing prescription drugs.

(3) The danger of retaining unused prescription drugs after the need to take them no longer exists.

(4) The necessity to carefully question physicians and pharmacists concerning the effects of taking prescription drugs, including the differences between brand-name drugs and generically equivalent drugs.

(5) The advisability of maintaining a prescription drug profile or other record of prescription drug dosage and frequency of dosage.

(6) The desirability of advising family members of the types and proper dosage of prescription drugs which are being taken.

(7) The dangers of taking prescription drugs in excess of prescribed dosages.

(8) The need to obtain complete, detailed directions from the physician or pharmacist concerning the time period a prescription drug should be taken.

CHAPTER 7
PRUDENT PHARMACEUTICAL PURCHASING

Section 701. Declaration of policy.

The General Assembly finds and declares as follows:

(1) The Commonwealth, through assistance programs enacted for the benefit of its citizens, is the largest single payor of prescription medications in Pennsylvania.

(2) In order to ensure that the Commonwealth, in expending money on behalf of its citizens, is not unduly harmed by being required to pay a price for pharmaceutical products purchased from manufacturers in excess of that established for other purchasers and reimbursers of these products and to ensure that the Commonwealth can efficiently and prudently expend its money and maximize its ability to provide for the health and welfare of as many of its needy citizens as possible, it is reasonable, necessary and in the public interest to require that pharmaceutical manufacturers offer a discount to the Commonwealth for pharmaceutical products purchased or reimbursed through State agencies.

(3) It is in the public interest for pharmaceutical manufacturers to provide the Commonwealth with data relating to the price of pharmaceutical products sold by the manufacturer to public bodies, hospitals, for-profit or nonprofit organizations, other manufacturers or wholesalers doing business in this Commonwealth in order to ensure that the Commonwealth can determine that it is being provided with the best prices offered by the manufacturer.

(4) On a national level, there has been a recognition that the need for discounts to State Medicaid agencies, which reimburse for a high volume of pharmaceutical products, exists.

(5) On a State level, the General Assembly recognizes that it is in the best interest of its citizens to provide pharmaceutical assistance in a reasonable and cost-efficient manner.

(6) Drug price inflation has caused an increase in the amount of public funds expended by PACE and General Assistance.

Section 702. Definitions.

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

"Average manufacturer price (AMP)." With respect to a covered prescription drug of the manufacturer for a calendar quarter, the average unit price paid to the manufacturer for the drug by wholesalers for drugs distributed to the retail pharmacy class of trade, except for direct sales to hospitals, health maintenance organizations and wholesalers where the drug is relabeled under that distributor's national drug code number. Federal Supply Schedule prices shall not be included in the calculation of

AMP. The term includes cash discounts and all other price reductions, other than rebates under this act and section 1927 of Title XIX of the Social Security Act (49 Stat. 620, 42 U.S.C. § 301 et seq.), added November 5, 1990 (Public Law 101-508, Title IV, § 4401(a)(3), 104 Stat. 1388-143), which reduce the actual price paid. For bundled or capitated sales, the allocation of the discount shall be made proportionately to the dollar value of the units of each covered prescription drug sold under the bundled or capitated arrangement. The AMP for a quarter shall be adjusted by the manufacturer if cumulative discounts or other arrangements subsequently adjust the prices actually realized.

"Bundled or capitated sales." The packaging of drugs of different types where:

(1) the condition of rebate or discount is that more than one drug type is purchased; or

(2) the resulting discount or rebate is greater than that which would have been received had the drug products been purchased separately.

"Consumer Price Index-Urban" or "CPI-U." A price index compiled by the Bureau of Labor Statistics of the United States Department of Labor for measuring the average change in the prices paid by urban consumers for a fixed market basket of services.

"Covered prescription drug." A legend drug, insulin, an insulin syringe or an insulin needle eligible for payment by the Commonwealth under PACE, PACENET or designated pharmaceutical programs.

"Depot price." The price available to any depot of the Federal Government for purchase of drugs from the manufacturer through the depot system of procurement.

"Designated pharmaceutical programs." The General Assistance Program and the Special Pharmaceutical Benefit Program in the Department of Public Welfare and the End Stage Renal Dialysis Program in the Department of Health.

"Direct seller." Any person, partnership, corporation, institution or entity engaged in the selling of pharmaceutical products directly to consumers in this Commonwealth.

"Distributor." A private entity under contract with the original labeler or holder of the national drug code number to manufacture, package or market the covered prescription drug.

"Doing business in this Commonwealth." The direct or indirect selling or the making of covered prescription drugs available for sale in a continuous and systematic manner with the reasonable expectation that these products will be sold to consumers in this Commonwealth.

"FDA." The Food and Drug Administration of the Public Health Service of the Department of Health and Human Services.

"General Assistance." The General Assistance program of the Department of Public Welfare of the Commonwealth.

"Innovator multiple-source drugs." A multiple-source drug that was originally marketed under a new drug application approved by the FDA. The term includes:

(1) covered prescription drugs approved under Product License Approval (PLA), Establishment License Approval (ELA) or Antibiotic Drug Approval (ADA); and

(2) a covered prescription drug marketed by a cross-licensed producer or distributor under the approved Abbreviated New Drug Application (ANDA) when the drug product meets this definition.

"Manufacturer."

(1) An entity which is engaged in any of the following:

(i) The production, preparation, propagation, compounding, conversion or processing of prescription drug products:

(A) directly or indirectly by extraction from substances of natural origin;

(B) independently by means of chemical synthesis; or

(C) by a combination of extraction and chemical synthesis.

(ii) The packaging, repackaging, labeling or relabeling, or distribution of prescription drug products.

(2) The entity holding legal title to or possession of the national drug code number for the covered prescription drug.

(3) The term does not include a wholesale distributor of drugs, drugstore chain organization or retail pharmacy licensed by the Commonwealth.

"National drug code number." The identifying drug number maintained by the FDA. The complete 11-digit number must include the labeler code, product code and package size code.

"New drug." A covered prescription drug approved as a new drug under section 201(p) of the Federal Food, Drug, and Cosmetic Act (52 Stat. 1040, 21 U.S.C. § 321(p)).

"Noninnovator multiple-source drug." Any of the following:

(1) A covered prescription drug which is not an innovator multiple-source drug approved under an Abbreviated New Drug Application (ANDA) or an Amended Antibiotic Drug Approval (AADA).

(2) A drug that has been approved for substitution under the act of November 24, 1976 (P.L.1163, No.259), referred to as the Generic Equivalent Drug Law.

"PACE." The program under Chapter 5.

"PACENET." The program established under section 519.

"Private entity." Includes a for-profit entity and a nonprofit entity.

"Producer Price Index for Pharmaceuticals." The prescription drug producer price index compiled by the Bureau of Labor Statistics of the United States Department of Labor for measuring average changes in selling prices received by domestic drug manufacturers.

"Provider." A licensed pharmacy or dispensing physician enrolled as a provider in PACE, PACENET or designated pharmaceutical programs.

"Rebate period." A calendar quarter or other period specified by the Secretary of Aging with respect to the payment of rebates under an agreement as provided in section 703.

"Secretary." The Secretary of Aging of the Commonwealth.

"Single-source drugs." Legend drug products for which the FDA has not approved an Abbreviated New Drug Application (ANDA).

"Unit." A drug unit in the lowest identifiable amount, such as tablet or capsule for solid dosage forms, milliliter for liquid forms and gram for ointments or creams. The manufacturer shall specify the unit for each dosage form and strength of each covered prescription drug in accordance with the instructions developed by the Health Care Financing Administration for purposes of the Federal Medicaid Rebate Program under section 1927 of Title XIX of the Social Security Act (49 Stat. 620, 42 U.S.C. § 301 et seq.).

"Wholesaler." Any person, partnership, corporation, institution or entity to which the manufacturer sells the covered prescription drug, including a pharmacy or chain of pharmacies, but that does not relabel or repackage the covered prescription drug.

Section 703. Rebate agreement.

(a) Requirement.—PACE, PACENET and designated pharmaceutical programs shall not reimburse for any covered prescription drug without a rebate agreement between the department and the manufacturer of the covered prescription drug.

(b) Exception.—Subsection (a) shall not apply if the availability of the drug is essential to the health of eligible claimants as determined by the department.

(c) Agreements.—Manufacturers of prescription drugs reimbursed under PACE, PACENET and designated pharmaceutical programs must enter into a rebate agreement with the department under this chapter to obtain such reimbursement. Nothing in this chapter shall be deemed to affect or impair any agreement made under the former provisions of Chapter 6 of the act of August 14, 1991 (P.L.342, No.36), known as the Lottery Fund Preservation Act.

(d) Notice.—The department shall notify enrolled providers of PACE, PACENET and designated pharmaceutical programs on an annual basis and, as appropriate, of all manufacturers who have entered into a rebate agreement.

(e) Drug formulary.—Except as provided in section 512, there shall be no drug formulary, prior or retroactive approval system or any similar restriction imposed on the coverage of outpatient drugs made by manufacturers who have agreements in effect with the Commonwealth to pay rebates for drugs utilized in PACE and PACENET, provided that such outpatient drugs were approved for marketing by the Food and Drug

Administration. This subsection shall not apply to any act taken by the department pursuant to its therapeutic drug utilization review program under section 505.

Section 704. Terms of rebate agreement.

(a) Quarterly basis.—A rebate agreement shall require any manufacturer of covered prescription drugs to provide to the department a rebate each calendar quarter in an amount specified in section 705 for covered prescription drugs of the manufacturer reimbursed during the quarter. The rebate shall be paid by the manufacturer not later than 30 days after the date of receipt of the information described in subsection (b) for the period involved.

(b) Information.—

(1) The department shall report to each manufacturer, not later than 60 days after the end of each calendar quarter, information by zip code of provider on the total number of dosage units of each covered prescription drug reimbursed under PACE, PACENET and designated pharmaceutical programs during the quarter.

(2) A manufacturer may review the information provided under paragraph (1) and verify information. Adjustments to rebates shall be made to the extent that information indicates that utilization was greater or less than the amount previously specified.

(3) In the event that in any quarter a material discrepancy in the department's information is certified by the manufacturer prior to the due date of the rebate, the department and the manufacturer shall, in good faith, attempt to resolve the discrepancy. If resolution is not reached within 30 days of receipt of the manufacturer's certification by the department, the manufacturer may appeal the department's decision under the department's formal fair hearings and appeals process. The manufacturer shall pay the department that portion of the rebate amount which is not disputed within the required time frame under this chapter. Any balance due, plus statutory interest, shall be paid or credited by the manufacturer or the department by the due date of the next quarterly payment after resolution of the dispute.

(c) Manufacturer provision of price information.—

(1) Each manufacturer with an agreement in effect under this chapter shall report the average manufacturer price for all covered prescription drugs produced by that manufacturer to the department not later than 30 days after the last day of each quarter.

(2) The department shall retain the services of an independent contractor to survey wholesalers, direct sellers and manufacturers that directly distribute their covered prescription drugs, when necessary, to verify manufacturer prices reported under paragraph (1). Any survey conducted shall not reveal to the department nor to any other person or entity other than the independent contractor the name, identity, location, actual acquisition invoice, other proprietary information or any

information from which the department might be enabled to ascertain the name, identity or location of any wholesaler, direct seller or provider so surveyed unless the contractor shall have gathered sufficient evidence to enable the department to bring charges against any wholesaler, direct seller or provider in violation of subsection (d)(3).

(d) Penalties.—The department shall administer penalties as follows:

(1) A manufacturer who fails to supply information required under subsection (c)(1) shall be liable for a civil penalty in the amount of 2% of the rebate next required to be paid, plus $1,000 for each day that the information is late. If the information is not reported within 30 days of the due date, the agreement shall be suspended for services furnished after the end of the 30-day period until the date the information is reported or the expiration of 45 days, whichever is later.

(2) A manufacturer who knowingly supplies false information that is required under subsection (c)(1) shall be liable for a civil penalty in the amount of $50,000 for each item of false information.

(3) A direct seller, manufacturer or wholesaler who refuses a request for information or knowingly provides false information that is required under subsection (c)(2) shall be liable for a civil penalty in the amount of $50,000.

(4) Penalties collected under this subsection shall be deposited into the fund.

(5) All civil monetary penalties imposed under this chapter are in addition to other civil or criminal penalties.

(e) Confidentiality of information.—Information disclosed by manufacturers, wholesalers or direct sellers under this chapter is confidential and shall not be disclosed by the department in a form which discloses the identity of a specific manufacturer, wholesaler or direct seller or the prices charged for drugs by the manufacturer or wholesaler, except as the department determines to be necessary to carry out this chapter and to permit the Department of the Auditor General and the Office of State Inspector General to review the information provided.

(f) Length of agreement.—A rebate agreement shall remain in effect for an initial period of not less than one year and shall be automatically renewed for a period of not less than one year unless terminated under subsection (g).

(g) Termination.—

(1) The department may provide for termination of a rebate agreement for any reason. Termination shall not be effective earlier than 60 days after the date of receipt of notice of termination by the manufacturers.

(2) A manufacturer may terminate a rebate agreement for any reason. Termination shall not be effective earlier than 60 days after the date of receipt of notice of termination by the department.

(3) Termination of the rebate agreement shall not affect rebates due under the agreement before the effective date of termination.

(4) Commonwealth Court shall have original jurisdiction over cases of termination of agreements under this subsection. Commencement of an action under this paragraph shall not delay the effective date of termination.

(5) If a rebate agreement is terminated for cause, another agreement with the same manufacturer or a successor manufacturer may not be entered into until a period of one year has elapsed from the date of the termination unless the department finds good cause for an earlier agreement.

Section 705. Amount of rebate.

(a) Single-source drugs and innovator multiple-source drugs.—With respect to single-source drugs and innovator multiple-source drugs, each manufacturer shall remit a rebate to the Commonwealth. Except as otherwise provided in this section, the amount of the rebate to the Commonwealth per calendar quarter with respect to each dosage form and strength of single-source drugs and innovator multiple-source drugs shall be as follows:

(1) For quarters beginning after September 30, 1992, and ending before January 1, 1997, the product of the total number of units of each dosage form and strength reimbursed by PACE and General Assistance in the quarter and the difference between the average manufacturer price and 85% of that price, after deducting customary prompt payment discounts, for the quarter.

(2) For quarters beginning after December 31, 1996, the product of the total number of units of each dosage form and strength reimbursed by PACE, PACENET and designated pharmaceutical programs in the quarter and the difference between the average manufacturer price and 83% of that price, after deducting customary prompt payment discounts.

(b) Rebate for other drugs.—

(1) The amount of the rebate to the Commonwealth for a calendar quarter with respect to covered prescription drugs which are noninnovator multiple-source drugs shall be equal to the product of:

(i) the applicable percentage of the average manufacturer price, after deducting customary prompt payment discounts, for each dosage form and strength of such drugs for the quarter; and

(ii) the number of units of such form and dosage reimbursed by PACE and General Assistance in the quarter.

(2) For the purposes of paragraph (1), the applicable percentage for calendar quarters beginning after September 30, 1992, and ending before January 1, 1997, is 11%.

(c) Revised rebate for other drugs.—Beginning after December 31, 1996:

(1) The amount of the rebate to the Commonwealth for a calendar quarter with respect to covered prescription drugs which are noninnovator multiple-source drugs shall be the greater of the product of:

(i) the applicable percentage of the average manufacturer price, after deducting customary prompt payment discounts, for each dosage form and strength of such drugs for the quarter; and

(ii) the number of units of such form and dosage reimbursed by PACE, PACENET and designated pharmaceutical programs in the quarter.

(2) For purposes of paragraph (1), the applicable percentage is 17%.

(d) Drugs approved after act takes effect.—In the case of a covered outpatient drug approved for marketing after the effective date of the act of August 14, 1991 (P.L.342, No.36), known as the Lottery Fund Preservation Act, any reference to January 1, 1991, shall be a reference to the first day of the first month during which the drug was marketed.

Section 706. Excessive pharmaceutical price inflation discount.

(a) General rule.—A discount shall be provided to the department for all covered prescription drugs. The discount shall be calculated as follows:

(1) For each quarter for which a rebate under section 705(a) and (b) is to be paid after December 31, 1991, and before January 1, 1997, the average manufacturer price for each dosage form and strength of a covered prescription drug shall be compared to the average manufacturer price for the same form and strength in the previous calendar year, and a percentage increase shall be calculated.

(2) For each quarter under paragraph (1), the average percentage increase in the Producer Price Index for Pharmaceuticals over the same quarter in the previous calendar year shall be calculated.

(3) If the calculation under paragraph (1) is greater than the calculation under paragraph (2), the discount amount for each quarter shall be equal to the product of:

(i) the difference between the calculations under paragraphs (1) and (2); and

(ii) the total number of units of each dosage form and strength reimbursed by PACE and General Assistance and the average manufacturer price reported by the manufacturer under section 704(c)(1).

(b) Revised general rule.—A discount shall be provided to the department for all covered prescription drugs. The discount shall be calculated as follows:

(1) For each quarter for which a rebate under section 705(a) and (c) is to be paid after December 31, 1996, the average manufacturer price for each dosage form and strength of a covered prescription drug shall be compared to the average manufacturer price for the same form and

strength in the previous calendar year and a percentage increase shall be calculated.

(2) For each quarter under paragraph (1), the average percentage increase in the Consumer Price Index-Urban over the same quarter in the previous calendar year shall be calculated.

(3) If the calculation under paragraph (1) is greater than the calculation under paragraph (2), the discount amount for each quarter shall be equal to the product of:

(i) the difference between the calculations under paragraphs (1) and (2); and

(ii) the total number of units of each dosage form and strength reimbursed by PACE, PACENET and designated pharmaceutical programs and the average manufacturer price reported by the manufacturer under section 704(c)(1).

(c) New bimarketed drugs.—For covered prescription drugs that have not been marketed for a full calendar year, subsection (a) shall apply after the covered prescription drug has been on the market for four consecutive quarters. The drug's initial average manufacturer price shall be based on the first day of the first quarter that the drug was marketed.

Section 707. Lowered best price.

(a) General rule.—If the rebate under section 705 and the discount under section 706 would establish a lowered Federal best price, as defined in section 1927(c)(1)(C) of the Social Security Act (49 Stat. 620, 42 U.S.C. § 1396r-8(c)(1)(C)), the manufacturer shall be liable for a total rebate and discount in an amount that does not reduce the Federal best price for that covered prescription drug.

(b) Procedure.—Any claim by a manufacturer that a rebate would establish a lower Federal best price under subsection (a) shall be verified in writing by a department-approved independent public accounting firm within 45 days of the end of the quarter for which the claim is asserted. The information provided to the public accounting firm shall remain confidential.

(c) Civil penalty.—A manufacturer which provides false information under this section shall be liable for a civil penalty in an amount not to exceed $50,000. Each item of false information constitutes a separate violation.

Section 708. Exemption.

Section 521(a) shall not apply to rebates under this chapter.

Section 709. Disposition of funds.

(a) PACE and PACENET.—Money received under this chapter in connection with PACE and PACENET shall be deposited in the Pharmaceutical Assistance Contract for the Elderly Fund.

(b) Designated pharmaceutical programs.—Money received under this chapter in connection with designated pharmaceutical programs shall be

treated as a refund of expenditures to the appropriation which originally provided the funding for the pharmaceutical purchase.

CHAPTER 9
TRANSPORTATION SERVICES

Section 901. Definitions.

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

"Shared-ride public transportation services." Demand-responsive transportation that is available to the general public, operates on a nonfixed route basis and charges a fare to all riders. For transportation to be included in this definition, the first fare-paying passengers to enter the public transportation vehicle must not refuse to share the vehicle with other passengers during a given trip. The term excludes exclusive-ride taxi service, charter and sightseeing services, nonpublic transportation, school bus and limousine services.

Section 902. Department of Transportation.

The Department of Transportation has the power and duty to make grants from the fund to transportation companies, county transportation systems and local transportation organizations to pay estimated transit losses resulting from providing free service or local common carrier mass transportation systems to persons 65 years of age or older when passage is on fixed-route public transportation services during nonpeak riding hours and on holidays and weekends. Reimbursement shall be as follows:

(1) The losses resulting from granting service on mass transportation systems shall be reimbursable at 100% of the system's average or base fare, whichever is less, multiplied by the number of trips made by senior citizens participating in the free transit program.

(2) Notwithstanding paragraph (1), the department shall, with the approval of the Governor's Office of the Budget, reimburse transportation companies or local transportation organizations for 100% of the losses resulting from senior citizen transfer trips incurred under the conditions of this subsection.

(3) Money appropriated from the General Fund to the Department of Transportation to augment fixed-route public transportation services under this section shall be granted to transportation providers at the discretion of the Department of Transportation.

Section 903. Commuter rail fare.

With regard to passage on fixed-route commuter rail lines, the fare for adults 65 years of age or older who do not qualify as eligible claimants under the pharmaceutical assistance contract for the elderly program shall be limited to $1 per trip but only when utilizing such transportation services during nonpeak riding hours and on holidays and weekends.

Section 904. Shared-ride transportation.

(a) Program grants.—The Department of Transportation has the power and duty to administer, utilizing a fixed amount of money from the fund as provided through executive authorizations by the Governor, a program providing shared-ride public transportation services for adults 65 years of age or older. Individuals utilizing shared-ride public transportation services for older adults shall contribute 15% of the individual fare and 85% of the individual fare shall be reimbursed by the fund.

(b) Regulations.—The Department of Transportation shall promulgate regulations necessary to carry out the purposes of this section, including regulations that permit limited reimbursement for shared-ride public transportation services providing access to and from public airports. The Department of Transportation, in consultation with the Pennsylvania Public Utility Commission and the department, shall establish reasonable per mile or trip fare limits for purposes of subsection (a). In accordance with section 2203-A(a)(27) of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, no regulation shall take effect until submitted to the department for comment.

(c) Coordinated transportation plans.—The Department of Transportation shall require that each transportation provider or designated coordinator, whichever is appropriate, annually develop a coordinated transportation plan which shall include, but not be limited to, any current fixed-route system and shared-ride programs. All plans must be submitted to and approved by the department no later than June 1 of each fiscal year.

(d) Other forms of assistance.—Any eligible claimant whose transportation services are covered in part by any other plan of assistance may be required to receive reduced transportation assistance under the provisions of this chapter.

(e) Entitlement not created.—Nothing in this chapter creates or provides any individual with an entitlement to services.

Section 905. Grants.

Grants may be made under this chapter with reference to any appropriate project, irrespective of when it was first commenced or considered and regardless of whether costs with respect to the project have been incurred prior to the time the grant is applied for or made.

CHAPTER 21
MISCELLANEOUS PROVISIONS

Section 2101. Savings.

This act does not affect any act done, regulation promulgated, liability incurred or right accrued or vested or affect any civil or criminal proceeding pending or to be commenced to enforce any right or penalty or punish any offense under any statute or part of a statute repealed by this act.

Section 2102. Annual report to General Assembly.

(a) Submission of report.—The department shall submit a report no later than April 1 of each year to the chairman and minority chairman of the Aging and Youth Committee of the Senate, the chairman and minority chairman of the Aging and Youth Committee of the House of Representatives and the Pharmaceutical Assistance Review Board.

(b) Collection of data.—The department shall maintain monthly statistical records on PACE and PACENET, including the level of participation and any patterns of unusual drug usage for purposes of formulating the annual report.

(c) Information for inclusion in annual report.—The annual report shall contain, but not be limited to, all information relating to:

(1) The number of persons served by PACE and PACENET and their counties of residence.

(2) A breakdown of the numbers and kinds of pharmaceuticals used.

(3) The cost of prescriptions.

(4) An estimate of actual expenses incurred by pharmacists participating in the program.

(5) The results obtained by the drug education program under section 522.

(6) Information regarding the operation of the therapeutic drug utilization review system for the prior calendar year, which shall include, at a minimum:

(i) The scope of physician and pharmacist participation in the system.

(ii) A description of claimant response to the system.

(iii) Data for each month of the covered period regarding the number of prescription revisions based on utilization review, including drug information, cost savings and the policy used by the department to make utilization review decisions.

(7) Information on the existence and scope of fraudulent activity and violations of this act by providers participating in PACE and PACENET.

(8) Information regarding the financial status of PACE and PACENET, including, but not limited to, the adequacy of any applicable deductible and copayment levels, based upon the financial experience and projections of PACE and PACENET.

Section 3. The provisions of this act are severable. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application.

Section 4. (a) The act of August 14, 1991 (P.L.342, No.36), known as the Lottery Fund Preservation Act, is repealed.

(b) All other acts and parts of acts are repealed insofar as they are inconsistent with this act.

Section 5. This act shall take effect as follows:

(1) The amendment or addition of sections 303 and 306 of the act shall take effect in 60 days.

(2) The remainder of this act shall take effect immediately.

APPROVED—The 21st day of November, A.D. 1996.

THOMAS J. RIDGE