

LEGISLATIVE REFERENCE BUREAU

AMENDMENTS TO HOUSE BILL NO. 838

Sponsor: Rafferty

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1 Amend Bill, page 1, lines 11 through 14, by striking out
2 "further providing for conditions" in line 11, all of lines 12
3 and 13 and "parents" in line 14 and inserting
4 providing for access to community pharmacy services

5 Amend Bill, page 1, lines 17 through 22; pages 2 through 4,
6 lines 1 through 30; page 5, lines 1 through 4, by striking out
7 all of said lines on said pages and inserting

8 Section 1. The act of May 17, 1921 (P.L.682, No.284), known
9 as The Insurance Company Law of 1921, is amended by adding a
10 section to read:

11 Section 635.5. Access to Community Pharmacy Services.--(a)
12 With respect to prescription medications dispensed by a pharmacy
13 that agrees to participate in a provider network pursuant to
14 subsection (c), no health insurance policy, government program
15 or pharmacy benefit manager providing coverage or reimbursement
16 for the dispensing of prescription medications may as a
17 condition for the provision of benefits or for the payment of
18 reimbursement for medications or pharmacy services:

19 (1) require a covered individual to obtain any prescription
20 medication from a mail order pharmacy;

21 (2) impose upon a covered individual utilizing a retail
22 community pharmacy any copayment, deductible or other cost-
23 sharing requirement or prior authorization requirement not
24 imposed upon a covered individual utilizing a mail order
25 pharmacy;

26 (3) subject any medication dispensed by a retail community
27 pharmacy to a covered individual to a minimum or maximum
28 quantity limit, length of script, restriction on refills or
29 requirement to obtain refills not imposed upon a mail order
30 pharmacy;

31 (4) require a covered individual in whole or in part to pay
32 for any medication dispensed by a retail community pharmacy and
33 seek reimbursement when the individual is not required to pay
34 for and seek reimbursement in the same manner for a prescription

1 dispensed by a mail order pharmacy;

2 (5) subject a covered individual to any administrative
3 requirement in order to use a retail community pharmacy that is
4 not imposed upon the use of a mail order pharmacy, including a
5 requirement to elect not to have a prescription dispensed by a
6 mail order pharmacy as a condition of utilizing a retail
7 community pharmacy; or

8 (6) impose any other term, condition or requirement
9 pertaining to the use of the services of a retail community
10 pharmacy that materially and unreasonably interferes with or
11 impairs the right of a covered individual to obtain prescription
12 medications from a retail community pharmacy of the individual's
13 choice.

14 (b) (1) No health insurance company, agent or contractor of
15 an insurance company, government program or pharmacy benefit
16 manager shall, in the administration of a health insurance
17 policy or a pharmacy provider network, take any action or allow
18 any action to occur that results in actions prohibited under
19 subsection (a).

20 (2) With respect to prescription medications dispensed by a
21 pharmacy eligible to participate in a provider network under
22 subsection (c), information regarding the dispensing of
23 prescription medications by a pharmacy shall not be used by a
24 health insurance company, an agent, affiliate or contractor of
25 an insurance company, a government program or by a prescription
26 benefit manager to promote, advertise or encourage the use of a
27 participating pharmacy, including a mail order pharmacy.

28 (c) (1) A pharmacy licensed and in good standing with the
29 State Board of Pharmacy, and not disqualified from participation
30 in the Medicaid or Medicare program for cause, shall have a
31 right to participate in a pharmacy provider network, provided
32 the pharmacy offers to enter into an agreement accepting the
33 standard terms, conditions or requirements relating to
34 dispensing fees, payments for product costs and other pharmacy
35 services and the quality of dispensing and other pharmacy
36 services established by a health insurance company, government
37 program or pharmacy benefit manager for all pharmacies in the
38 provider network.

39 (2) The standard terms and conditions relating to dispensing
40 fees and payment for product costs and other pharmacy services
41 established under paragraph (1) shall provide convenient access
42 to retail community pharmacies consistent with the standards
43 established under section 2121 and taking into consideration the
44 standards established by the Center for Medicare and Medicaid
45 Services of the United States Department of Health and Human
46 Services pursuant to section 1395w-104(b) (1) (C) of the Social
47 Security Act (49 Stat. 620, 42 U.S.C. § 1395w-104(b) (1) (C)).

48 (3) The standard terms and conditions relating to dispensing
49 fees, ingredient costs and payments for pharmacy services
50 provided to retail community pharmacies shall not be less than
51 the amounts paid by or for the benefit of a health insurance

1 company, government program or pharmacy benefit manager for
2 dispensing of the same medications and the provision of
3 comparable services to any mail order pharmacy, including
4 amounts paid or distributed to a mail order pharmacy by an
5 affiliate of the mail order pharmacy or by the pharmacy benefit
6 manager.

7 (4) In determining whether the terms and conditions relating
8 to dispensing fees, ingredient costs and payments for pharmacy
9 services are not less than amounts paid to a mail order pharmacy
10 under paragraph (3), consideration shall be given to the extent
11 practicable to any incentive payments received for the
12 dispensing of prescription medications by a mail order pharmacy
13 or an affiliate of a mail order pharmacy, including a pharmacy
14 benefit manager, from a pharmaceutical manufacturer or
15 distributor other than amounts paid for services provided to a
16 pharmaceutical manufacturer or distributor, or amounts used to
17 reduce the cost of prescription medication benefits paid by the
18 purchaser of a health insurance policy or the services of a
19 prescription drug manager, or by a government program.

20 (5) A pharmacy shall not be deemed to be eligible to
21 participate in a provider network under this subsection during
22 any period of time for which its right to participate in a
23 network has been suspended or revoked for serious violations of
24 a network pharmacy provider agreement established under this
25 subsection that reasonably warrant suspension or revocation.

26 (d) (1) With respect to a health insurance company or
27 pharmacy benefit manager:

28 (i) the department may utilize the enforcement mechanisms,
29 remedies and penalties available under section 628 and may
30 demand the production of any information necessary to enforce
31 this section; and

32 (ii) regardless of whether any enforcement action is taken
33 by the department, a covered individual, pharmacy or pharmacist
34 aggrieved by a violation of this section may seek relief to
35 remedy alleged violations of this section involving at least one
36 level of internal review and investigation in the manner
37 provided under section 2161(b) and an opportunity to appeal to
38 the department in the manner provided under section 2142 unless,
39 with respect to a pharmacy or pharmacist, an agreement with the
40 insurance company or pharmacy benefit manager establishes an
41 alternative dispute resolution process in the manner provided
42 under section 2162(f).

43 (2) A covered individual, pharmacy or pharmacist aggrieved
44 by a violation of this section may petition the department to
45 review complaints regarding violations of this section.

46 (e) It is the intent of the General Assembly that this
47 section and the other provisions of Articles VI, VI-A, VI-B, X-A
48 and XII relating to health insurance shall, as applied to
49 persons subject to this act to the fullest extent possible, be
50 preserved from preemption by Federal law. In the event any
51 portion of this section or Article VI, VI-A, VI-B, X-A or XII

1 shall be preempted by Federal law or otherwise declared invalid
2 or unenforceable, the remaining provisions of such laws shall
3 remain in force and effect.

4 (f) As used in this section:

5 (1) "Covered individual" means an individual receiving
6 prescription medication coverage or reimbursement provided by a
7 health insurance policy, government program or pharmacy benefit
8 manager.

9 (2) "Government program" means any of the following:

10 (i) The Commonwealth's medical assistance program
11 established under the act of June 13, 1967 (P.L.31, No.21),
12 known as the "Public Welfare Code."

13 (ii) The adult basic coverage insurance program established
14 under Chapter 13 of the act of June 26, 2001 (P.L.755, No.77),
15 known as the "Tobacco Settlement Act."

16 (iii) The Children's Health Care Program established under
17 Article XXIII.

18 (iv) The program of pharmaceutical assistance for the
19 elderly established by the act of August 26, 1971 (P.L.351,
20 No.91), known as the "State Lottery Law."

21 (v) An employe benefit plan described in section 1003(b)(1)
22 of the Employee Retirement Income Security Act of 1974 (Public
23 Law 93-46, 29 U.S.C. § 1003(b)(1)), applicable to government
24 employes who are residents of this Commonwealth.

25 (vi) Any other program established or operated by the
26 Commonwealth that provides or pays for the cost of prescription
27 medications and pharmacy services provided to residents of this
28 Commonwealth.

29 (3) "Health insurance company" means a fraternal benefit
30 society, health maintenance organization, hospital plan
31 corporation, insurer, preferred provider organization or
32 professional health services plan corporation as defined by
33 section 603-B, or other entity subject to this act.

34 (4) "Health insurance policy" means a group or individual
35 health or sickness or accident insurance policy, subscriber
36 contract or certificate issued by a health insurance company
37 providing coverage or benefits for prescription medications to
38 residents of this Commonwealth.

39 (5) "Mail order pharmacy" means a pharmacy that
40 predominantly receives prescriptions by mail, telefax or through
41 electronic submissions and predominantly dispenses the
42 medications to patients through the use of the United States
43 mail or other common or contract carrier delivery service and
44 generally provides consultations with patients electronically
45 rather than face-to-face.

46 (6) "Pharmacy benefit manager" means a person, partnership,
47 association or corporation not holding a certificate of
48 authority under section 630 that establishes, operates,
49 maintains or administers agreements with pharmacies and health
50 insurance companies, government programs or employe benefit
51 plans described in section 1003(a) of the Employee Retirement

1 Income Security Act of 1974 relating to the dispensing of
2 prescription medications and the provision of pharmacy services
3 to covered individuals, including agreements relating to the
4 amounts to be charged by the pharmacy for services rendered,
5 incentives provided to covered individuals to use the services
6 of designated pharmacies, or limitations on reimbursement only
7 when services are provided by designated pharmacies.

8 (7) "Retail community pharmacy" means a pharmacy that is
9 open to the public, serves walk-in customers and makes available
10 face-to-face consultations between licensed pharmacists and
11 persons to whom medications are dispensed.

12 Section 2. The Insurance Department may adopt regulations to
13 administer and enforce section 635.5 of the act.

14 Section 3. Section 635.5 of the act shall apply to health
15 insurance policies, government programs and agreements with
16 pharmacy benefit managers that are offered, issued, executed or
17 renewed or that have provisions related to prescription
18 medication benefits that are amended on or after the effective
19 date of section 635.5 of the act.

20 Section 4. This act shall take effect as follows:

21 (1) The addition of section 635.5 of the act shall take
22 effect in 120 days.

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