No. 2004-219

AN ACT

SB 1167

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," defining "less expensive"; and further providing for generic drugs and for amount of rebate for certain prescription drugs.

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

Section 1. Section 502 of the act of August 26, 1971 (P.L.351, No.91), known as the State Lottery Law, is amended by adding a definition to read:
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:

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"Less expensive." The lowest net cost to the program. The net cost shall include the amount paid by the Commonwealth to a pharmacy for a drug under a current retail pharmacy reimbursement formula less any discount or rebates, including those paid during the previous calendar quarter and inclusive of all dispensing fees.

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Section 2. Sections 510(a) and 705(c.1) of the act, amended or added November 26, 2003 (P.L.212, No.37), are amended to read:
Section 510. Generic drugs.

(a) In general.—Notwithstanding any other statute or regulation, **[if an]** ***a brand name product shall be dispensed and not substituted with an A-rated generic therapeutically equivalent drug if it is less expensive to the program. If a less expensive*** 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 reimburse providers based upon the most current listing of Federal upper payment limits established in the Medicaid Program under 42 CFR § 447.332 (relating to upper limits for multiple source drugs), plus a dispensing fee as set forth in section 509(6). The department shall update the average wholesale costs and the Federal upper payment limits on a regular basis, at least every 30 days. 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.

(5) The brand name drug is less expensive to the program.

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Section 705. Amount of rebate.

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(c.1) Rebates for other **[drugs for quarters beginning after December 31, 2003.—For quarters beginning after December 31, 2003, all of the following shall apply:**

(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, PACENET and designated pharmaceutical programs in the quarter.

(2) For purposes of paragraph (1), the applicable percentage is 14%.] ***drugs.—For quarters beginning after December 31, 2003, each manufacturer shall remit a rebate to the Commonwealth for the total***

number of units of each dosage form and strength reimbursed by PACE, PACENET and designated pharmaceutical programs in the quarter pursuant to the determination established by section 1927(c)(3) of the Social Security Act (49 Stat. 620, 42 U.S.C. § 1396r-8(c)(3)).

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Section 3. The amendment of section 705(c.1) of the act shall be retroactive to January 1, 2004.

Section 4. Notwithstanding any other provision of law to the contrary, persons who, as of December 31, 2004, are enrolled in the PACENET program established pursuant to section 519 of the act shall remain eligible for the PACENET program if the maximum income limit is exceeded due solely to a Social Security cost-of-living adjustment. Eligibility in the PACENET program pursuant to this section shall expire on December 31, 2005.

Section 5. This act shall take effect immediately.

APPROVED—The 30th day of November, A.D. 2004.

EDWARD G. RENDELL