

Legislative Budget and Finance Committee

**The Impact of Act 2012-207 on Access to Retail Pharmacies and
Cost of Prescription Medications**

Report Presentation by Dr. Maryann Nardone at April 15, 2015, Meeting

Good morning. Act 207 of 2012 directed the Legislative Budget and Finance Committee (LB&FC) to evaluate the impact of the Act's provisions on access to prescription drugs at independent and chain pharmacies. It also directed us to evaluate whether its provisions had a material impact on the cost of prescription medications for consumers and health plans.

The Pennsylvania General Assembly enacted Act 207 in an effort to provide greater consumer access to retail pharmacies and a "level playing field" for retail and mail order pharmacies. To accomplish its goals, the Act prohibits state-licensed health insurance plans from requiring their consumers to obtain prescription medication through mail order pharmacies and requires that, when a plan offers a prescription drug benefit, its copayments and coinsurance are to be the same for both mail order and retail pharmacies. The Act's requirements, however, apply only if the retail pharmacy agrees to the same terms and conditions that are in place for the plan's mail order pharmacy.

We found that Pennsylvania is one of eight states (Arkansas, Connecticut, Hawaii, Louisiana, Maryland, New York, Pennsylvania, and Texas) that have attempted to limit the required use of mail order pharmacies. Representatives of state pharmacy associations with whom we spoke, including Pennsylvania, indicated, however, that their state laws have had minimum impact, in part because of their limited applicability. As in Pennsylvania, their laws apply to state licensed health insurers, but not to the “health coverage” benefits available through federal Medicare and Medicaid programs, self-insured trusts and other such arrangements, which are governed under various federal laws. Nationwide, 61 percent of covered workers in private, public, and private not-for-profit firms that receive health care through their employers receive coverage through such arrangements, and therefore are not subject to state insurance laws.

To assess the impact of Act 207 on access to retail pharmacies, we provided opportunity for retail pharmacies (i.e., independent and chain pharmacies) to share their experiences with the implementation of the Act through a web-based survey. The 132 independent and chain pharmacy respondents to our questionnaire represent over 1,000 of the state’s roughly 3,000 licensed pharmacies.

Three-quarters (101 of 132) of our survey respondents, including all of the five chain pharmacy respondents, applied to be covered under the provisions of Act 207. Only half (55 of 101) of those that applied, however, were approved or chose to

participate. Typically, those that chose not to participate did not meet, or did not want to meet, the insurer's mail order pharmacy network requirements (e.g., hours of operation, specified inventory volume, etc.). Several also reported they were not provided a reason for their non-approval.

The absence of widespread implementation of Act 207 provides little opportunity to fully assess its impact on the cost of medication services for consumers and insurers. Nonetheless, just over half of those participating in Act 207 dispensing and responding to our survey, including two of the four participating chain respondents, think consumer out-of-pocket costs have remained the same or decreased (with decreases ranging from under \$10 to over \$10 for a 90-day supply) since Act 207 was implemented. The remainder, including two chains, reported consumer out-of-pocket costs have increased (with increases ranging from under \$10 to over \$10 for a 90-day supply).

We also spoke with the state's major health insurers about the costs they may have incurred as a result of Act 207. None of them reported incurring material cost increases as a result of the Act. One advised us that the costs associated with implementation typically involve the provider credentialing process, which are costs they would incur with or without Act 207.

For the most part, independent pharmacists who responded to our survey and those with whom we met expressed disappointment with the implementation of the Act in view of its original legislative intent to encourage consumer choice. They indicated that while well intentioned and a good first step, it was ignored, “lacked teeth,” or was not being enforced by the Insurance Department.

LB&FC staff reviewed Pennsylvania Insurance Department data on complaints it had received and its responses to those complaints. Relatively few consumer complaints (i.e., 36) were received by the Department from March 2013, when the Act was implemented, through mid-November 2014. In many instances, the complaints were not covered by the Act, as the filer of the complaint was not enrolled in a plan covered by the Act. In other instances, the consumer’s retail pharmacy reported that it did not choose to participate in Act 207 as it could not meet the conditions and pricing offered by the plan’s mail order pharmacy.

One pharmacy representative summarized the problems with the Act this way: “Unfortunately...health insurers, government programs, and pharmacy benefit managers have taken advantage of the legislation’s failure to more clearly address a number of issues by interpreting the revised legislation [i.e., Act 2012-207] in a manner that prevented it from having any appreciable impact on the availability of retail pharmacy services to Pennsylvania consumers.”

Throughout our work, we received several suggestions as to how to improve the implementation of Act 207, which we included in the report. Some of these issues, however—such as the applicability of the Act to ERISA plans and pharmacy benefit management companies that are not subject to state regulation—may simply not be solvable. Other issues, such as the vagueness of the “same terms and conditions” language in the Act, could be addressed through amendatory language. The Insurance Department suggests that it be involved initially and throughout any process to revise the Act in view of the complexity of health insurance laws at the state and federal level.

We thank the Pennsylvania Pharmacists Association and the Pennsylvania Association of Chain Drug Stores and their members for the consultation and assistance they provided our work. We also thank the Pennsylvania Insurance Department and its staff for their cooperation and assistance. In particular, we thank Arthur McNulty, Deputy Insurance Commissioner for Market Regulation; Carmen DiCello, R.Ph., the Director of Government and Public Affairs for the Value Drug Company; and Patricia Epple, CAE, CEO of the Pennsylvania Pharmacists Association.