

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL**No. 500** Session of
2023

INTRODUCED BY BROOKS, SCHWANK, KEARNEY, DILLON, BREWSTER, COSTA,
PHILLIPS-HILL, HUTCHINSON, J. WARD, MARTIN, CAPPELLETTI,
CULVER, COLLETT, SANTARSIERO AND HAYWOOD, MARCH 15, 2023

AS REPORTED FROM COMMITTEE ON HEALTH, HOUSE OF REPRESENTATIVES,
AS AMENDED, OCTOBER 18, 2023

AN ACT

1 Amending the act of June 13, 1967 (P.L.31, No.21), entitled "An
2 act to consolidate, editorially revise, and codify the public
3 welfare laws of the Commonwealth," in public assistance,
4 providing for medical assistance coverage for pasteurized
5 donor human milk.

6 This act may be referred to as Owen's Law.

7 The General Assembly finds and declares as follows:

8 (1) In the United States, one in nine infants are born
9 prematurely, one of the highest rates among developed
10 countries.

11 (2) Up to 70% of mothers with infants in neonatal
12 intensive care units cannot provide enough breast milk to
13 meet all of their infants' needs, despite adequate lactation
14 support and effort.

15 (3) ~~Donor~~ PASTEURIZED DONOR human milk provides a
16 lifesaving health benefit for high-risk infants as a
17 supplement or bridge when determined to be medically
18 necessary.

<--

1 (4) ~~Donor~~ PASTEURIZED DONOR human milk is evidence-based <--
2 nutritional medicine that is essential to the health of
3 medically fragile infants in both inpatient and outpatient
4 settings due to its anti-inflammatory and immunological
5 components.

6 (5) A human milk diet for medically compromised infants
7 provides unparalleled protection against serious health
8 complications that can lead to longer hospital stays,
9 multiple medical and surgical procedures, readmissions,
10 lifelong disability or even death.

11 (6) Along with avoiding serious medical complications,
12 the use of ~~donor~~ PASTEURIZED DONOR HUMAN milk in a hospital <--
13 increases exclusive maternal breastfeeding rates. A mother's
14 own milk provides the ultimate nutrition for the infant but
15 is not always adequate to meet the infant's needs.

16 (7) Pasteurized donor human milk dramatically reduces
17 the risk of necrotizing enterocolitis, the most prevalent
18 gastrointestinal emergency among preterm infants.

19 (8) Necrotizing enterocolitis has a 24% mortality rate
20 overall and surgical necrotizing enterocolitis has a 40%
21 mortality rate and may result in the partial or complete
22 destruction of the intestinal lining and may lead to short-
23 term and lifelong health consequences, including premature
24 death.

25 (9) The use of pasteurized donor human milk has been
26 shown to decrease the overall incidence of necrotizing
27 enterocolitis by up to 80% and the rate of surgical
28 necrotizing enterocolitis by more than 90%.

29 (10) Infants with a wide range of congenital or acquired
30 conditions can benefit from the use of medically prescribed

1 pasteurized donor human milk as a component of treatment when
2 their mothers' own milk is unavailable or cannot meet all of
3 their needs.

4 (11) Neonatal abstinence syndrome has tripled in the
5 last 10 years, including a seven-fold increase in neonatal
6 intensive care unit stays for drug-exposed infants who suffer
7 from feeding intolerance and many other side effects. The use
8 of pasteurized donor human milk to meet the nutritional needs
9 of infants with neonatal abstinence syndrome reduces their
10 symptoms and decreases the need for additional medical
11 intervention and treatment.

12 (12) Medical assistance coverage for prescribed and
13 medically necessary pasteurized donor human milk for
14 inpatient and outpatient infants is necessary to improve
15 health outcomes and reduce medical treatment costs in this
16 Commonwealth.

17 (13) This act has the following purposes:

18 (i) Promoting the health of medically fragile
19 infants through access to evidence-based pasteurized
20 donor human milk when medically prescribed and necessary.

21 (ii) Substantially reducing the incidence of
22 necrotizing enterocolitis in infants with risk factors
23 for the disease.

24 (iii) Improving medical outcomes for infants with
25 serious health conditions where access to pasteurized
26 donor human milk will aid in their recovery.

27 (iv) Reducing the symptomology of neonatal
28 abstinence syndrome for drug-exposed infants to decrease
29 the need for extensive medical intervention and
30 treatment.

1 (v) Requiring medical assistance coverage for
2 medically necessary pasteurized donor human milk for
3 inpatient and outpatient infants when needed.

4 (vi) Providing public awareness of the availability
5 of pasteurized donor human milk and educating families
6 and health care providers about this life-saving
7 medicine.

8 (vii) Improving short-term and long-term health
9 outcomes for the smallest and most fragile residents of
10 this Commonwealth by providing needed access to
11 pasteurized donor human milk not only to reduce health
12 care costs but, most importantly, to save lives.

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

15 Section 1. The act of June 13, 1967 (P.L.31, No.21), known
16 as the Human Services Code, is amended by adding a section to
17 read:

18 Section 443.13. Medical Assistance Coverage for Pasteurized
19 Donor Human Milk.--(a) ~~Notwithstanding any other provision of~~ <--
20 law, pasteurized donor human milk and related processing costs
21 shall be considered a compensable item under the medical
22 assistance program if: PASTEURIZED DONOR HUMAN MILK IS <--
23 COMPENSABLE UNDER THE MEDICAL ASSISTANCE PROGRAM IN ACCORDANCE
24 WITH THE COMMONWEALTH'S APPROVED STATE PLAN IF:

25 (1) The pasteurized donor human milk is medically prescribed <--
26 NECESSARY for an inpatient infant or an outpatient infant in <--
27 accordance with this section.

28 (2) The infant's mother is medically or physically unable to
29 produce maternal breast milk or produce maternal breast milk in
30 sufficient quantities to meet the infant's needs or if the

1 maternal breast milk is contraindicated.

2 ~~(b) The cost of pasteurized donor human milk shall be~~ <--
3 ~~reimbursed under the medical assistance program as provided~~
4 ~~under subsection (a) for:~~

5 ~~(1) An inpatient infant for whom the volume of the~~
6 ~~pasteurized donor human milk usage shall be tracked during the~~
7 ~~course of the inpatient infant's stay, charged and reimbursed~~
8 ~~through the inpatient stay payment.~~

9 ~~(2) An outpatient infant for whom the volume of the~~
10 ~~pasteurized donor human milk usage shall be calculated and~~
11 ~~charged throughout the course of the outpatient infant's~~
12 ~~treatment and reimbursed to the licensed milk bank providing~~
13 ~~pasteurized donor human milk for that infant.~~

14 ~~(c) The department shall biennially update its written~~
15 ~~guidance on pasteurized donor human milk and the Medical~~
16 ~~Assistance Program Outpatient Fee Schedule to reflect a medical~~
17 ~~assistance fee for pasteurized donor human milk that is~~
18 ~~commensurate with the current average national cost for non~~
19 ~~profit milk banks. The (B) THE DEPARTMENT SHALL REGULARLY~~ <--
20 ~~REVIEW AND UPDATE, AS NEEDED, WRITTEN GUIDANCE REGARDING~~
21 ~~PASTEURIZED DONOR HUMAN MILK. ANY updated pasteurized donor~~
22 ~~human milk guidance shall be posted on the department's publicly~~
23 ~~accessible Internet website.~~

24 ~~(d) (C) The department DEPARTMENT OF HEALTH, in~~ <--
25 ~~collaboration with the Department of Health DEPARTMENT, shall~~ <--
26 ~~develop and conduct a public information campaign to inform~~
27 ~~families and health care providers of the availability of~~
28 ~~pasteurized donor human milk in this Commonwealth to treat~~
29 ~~inpatient infants and outpatient infants, as provided in this~~
30 ~~section and as medically necessary, including the availability~~

1 of coverage through medical assistance.

2 ~~(e)~~ (D) The following words and phrases when used in this <--
3 section shall have the meanings given to them in this subsection
4 unless the context clearly indicates otherwise:

5 "Inpatient infant." An infant who is younger than twelve
6 months of age based on the infant's corrected gestational age,
7 who is receiving care in an inpatient setting, for whom
8 pasteurized donor human milk is medically necessary. and who <--
9 ~~exhibits~~ PASTEURIZED DONOR HUMAN MILK IS MEDICALLY NECESSARY FOR <--
10 AN INFANT WITH any of the following health conditions:

11 (1) An infant birth weight equal to or less than one
12 thousand eight hundred grams.

13 (2) An infant gestational age equal to or less than thirty-
14 four weeks.

15 (3) A high risk for development of necrotizing
16 enterocolitis, bronchopulmonary dysplasia, sepsis or retinopathy
17 of prematurity.

18 (4) A congenital or acquired gastrointestinal condition or
19 other serious medical condition associated with long-term
20 feeding or malabsorption complications.

21 (5) Congenital heart disease requiring surgery in the first
22 year of life.

23 (6) Has had or will have an organ or bone marrow transplant,
24 or has an immunologic deficiency.

25 (7) Renal disease requiring dialysis in the first year of
26 life.

27 (8) Infant hypoglycemia OR JAUNDICE. <--

28 (9) Neonatal abstinence syndrome.

29 (10) Any other ~~serious congenital or acquired~~ HEALTH <--
30 condition for which the use of pasteurized donor human milk is

1 ~~medically necessary and supports the treatment and recovery of~~ <--
2 ~~the child~~ AS DETERMINED BY THE DEPARTMENT. <--

3 "Licensed milk bank." A milk bank licensed in this
4 Commonwealth or through a hospital licensure process in
5 accordance with the act of February 12, 2020 (P.L.13, No.7),
6 known as the "Keystone Mother's Milk Bank Act."

7 "Necrotizing enterocolitis." A life-threatening condition
8 that most often occurs in a premature infant, but also occurs in
9 a term infant or near-term infant, and that causes intestinal
10 inflammation characterized by variable injury or damage to the
11 intestinal tract resulting in the potential death of intestinal
12 tissue.

13 "Neonatal abstinence syndrome." A withdrawal syndrome of an
14 infant that occurs when an infant is born after exposure to
15 substance abuse in utero, and that is associated with multiple
16 side effects, including tremors, vomiting, poor feeding, poor
17 weight gain and high-pitched crying, which may lead to increased
18 length of hospital stays and additional health care costs
19 depending on severity.

20 "Outpatient infant." An infant who is younger than twelve
21 months of age based on the infant's corrected gestational age,
22 who is receiving care in an outpatient setting, for whom
23 pasteurized donor human milk is medically necessary. and who <--
24 ~~exhibits~~ PASTEURIZED DONOR HUMAN MILK IS MEDICALLY NECESSARY FOR <--
25 AN INFANT WITH any of the following health conditions:

26 (1) A congenital or acquired gastrointestinal condition or
27 other serious medical condition associated with long-term
28 feeding or malabsorption complications.

29 (2) Congenital heart disease requiring surgery in the first
30 year of life.

1 (3) Has had or will have an organ or bone marrow Transplant
2 or has an immunologic deficiency.

3 (4) A history of sepsis.

4 (5) Renal disease requiring dialysis in the first year of
5 life.

6 (6) Any other serious congenital or acquired HEALTH <--
7 condition for which the use of pasteurized donor human milk is
8 medically necessary and supports the treatment and recovery of <--
9 the child AS DETERMINED BY THE DEPARTMENT. <--

10 "Pasteurized donor human milk." Human milk derived from a
11 donor as defined in section 3 of the "Keystone Mother's Milk
12 Bank Act," which is donated to a licensed milk bank for
13 processing and distribution.

14 Section 2. This act shall take effect in 60 days.