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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 1111 Session of  
2023

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INTRODUCED BY OBERLANDER, T. DAVIS, FEE, KAUFFMAN, ECKER,  
FLEMING, INNAMORATO, O'MARA AND SHUSTERMAN, MAY 24, 2023

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REFERRED TO COMMITTEE ON HEALTH, MAY 24, 2023

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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 human milk provides a lifesaving health  
16 benefit for high-risk infants as a supplement or bridge when  
17 determined to be medically necessary.

18 (4) Donor human milk is evidence-based nutritional  
19 medicine that is essential to the health of medically fragile

1 infants in both inpatient and outpatient settings due to its  
2 anti-inflammatory and immunological components.

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

8 (6) Along with avoiding serious medical complications,  
9 the use of donor milk in a hospital increases exclusive  
10 maternal breastfeeding rates. A mother's own milk provides  
11 the ultimate nutrition for the infant but is not always  
12 adequate to meet the infant's needs.

13 (7) Pasteurized donor human milk dramatically reduces  
14 the risk of necrotizing enterocolitis, the most prevalent  
15 gastrointestinal emergency among preterm infants.

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

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

26 (10) Infants with a wide range of congenital or acquired  
27 conditions can benefit from the use of medically prescribed  
28 pasteurized donor human milk as a component of treatment when  
29 their mothers' own milk is unavailable or cannot meet all of  
30 their needs.

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

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

14           (13) This act has the following purposes:

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

18           (ii) Substantially reducing the incidence of  
19 necrotizing enterocolitis in infants with risk factors  
20 for the disease.

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

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

28           (v) Requiring medical assistance coverage for  
29 medically necessary pasteurized donor human milk for  
30 inpatient and outpatient infants when needed.

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

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

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

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

15 Section 443.13. Medical Assistance Coverage for Pasteurized  
16 Donor Human Milk.--(a) Notwithstanding any other provision of  
17 law, pasteurized donor human milk and related processing costs  
18 shall be considered a compensable item under the medical  
19 assistance program if:

20 (1) The pasteurized donor human milk is medically prescribed  
21 for an inpatient infant or an outpatient infant in accordance  
22 with this section.

23 (2) The infant's mother is medically or physically unable to  
24 produce maternal breast milk or produce maternal breast milk in  
25 sufficient quantities to meet the infant's needs or if the  
26 maternal breast milk is contraindicated.

27 (b) The cost of pasteurized donor human milk shall be  
28 reimbursed under the medical assistance program as provided  
29 under subsection (a) for:

30 (1) An inpatient infant for whom the volume of the

1 pasteurized donor human milk usage shall be tracked during the  
2 course of the inpatient infant's stay, charged and reimbursed  
3 through the inpatient stay payment.

4 (2) An outpatient infant for whom the volume of the  
5 pasteurized donor human milk usage shall be calculated and  
6 charged throughout the course of the outpatient infant's  
7 treatment and reimbursed to the licensed milk bank providing  
8 pasteurized donor human milk for that infant.

9 (c) The department shall biennially update its written  
10 guidance on pasteurized donor human milk and the Medical  
11 Assistance Program Outpatient Fee Schedule to reflect a medical  
12 assistance fee for pasteurized donor human milk that is  
13 commensurate with the current average national cost for non-  
14 profit milk banks. The updated pasteurized donor human milk  
15 guidance shall be posted on the department's publicly accessible  
16 Internet website.

17 (d) The department, in collaboration with the Department of  
18 Health, shall develop and conduct a public information campaign  
19 to inform families and health care providers of the availability  
20 of pasteurized donor human milk in this Commonwealth to treat  
21 inpatient infants and outpatient infants, as provided in this  
22 section and as medically necessary, including the availability  
23 of coverage through medical assistance.

24 (e) The following words and phrases when used in this  
25 section shall have the meanings given to them in this subsection  
26 unless the context clearly indicates otherwise:

27 "Inpatient infant." An infant who is younger than twelve  
28 months of age based on the infant's corrected gestational age,  
29 who is receiving care in an inpatient setting, for whom  
30 pasteurized donor human milk is medically necessary and who

1 exhibits any of the following health conditions:

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

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

6 (3) A high risk for development of necrotizing  
7 enterocolitis, bronchopulmonary dysplasia, sepsis or retinopathy  
8 of prematurity.

9 (4) A congenital or acquired gastrointestinal condition or  
10 other serious medical condition associated with long-term  
11 feeding or malabsorption complications.

12 (5) Congenital heart disease requiring surgery in the first  
13 year of life.

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

16 (7) Renal disease requiring dialysis in the first year of  
17 life.

18 (8) Infant hypoglycemia.

19 (9) Neonatal abstinence syndrome.

20 (10) Any other serious congenital or acquired condition for  
21 which the use of pasteurized donor human milk is medically  
22 necessary and supports the treatment and recovery of the child.

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

27 "Necrotizing enterocolitis." A life-threatening condition  
28 that most often occurs in a premature infant, but also occurs in  
29 a term infant or near-term infant, and that causes intestinal  
30 inflammation characterized by variable injury or damage to the

1 intestinal tract resulting in the potential death of intestinal  
2 tissue.

3 "Neonatal abstinence syndrome." A withdrawal syndrome of an  
4 infant that occurs when an infant is born after exposure to  
5 substance abuse in utero, and that is associated with multiple  
6 side effects, including tremors, vomiting, poor feeding, poor  
7 weight gain and high-pitched crying, which may lead to increased  
8 length of hospital stays and additional health care costs  
9 depending on severity.

10 "Outpatient infant." An infant who is younger than twelve  
11 months of age based on the infant's corrected gestational age,  
12 who is receiving care in an outpatient setting, for whom  
13 pasteurized donor human milk is medically necessary and who  
14 exhibits any of the following health conditions:

15 (1) A congenital or acquired gastrointestinal condition or  
16 other serious medical condition associated with long-term  
17 feeding or malabsorption complications.

18 (2) Congenital heart disease requiring surgery in the first  
19 year of life.

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

22 (4) A history of sepsis.

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

25 (6) Any other serious congenital or acquired condition for  
26 which the use of pasteurized donor human milk is medically  
27 necessary and supports the treatment and recovery of the child.

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

1 distribution.

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