SENATE DOCKET, NO. 193   FILED ON: 1/12/2023

SENATE . . . . No. 715

The Commonwealth of Massachusetts

PRESENTED BY:

Bruce E. Tarr

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to ensure access to prescription medications.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Bruce E. Tarr	*First Essex and Middlesex*

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SENATE . . . . No. 715

By Mr. Tarr, a petition (accompanied by bill, Senate, No. 715) of Bruce E. Tarr for legislation to ensure access to prescription medications. Financial Services.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court
(2023-2024)

An Act to ensure access to prescription medications.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 176D is hereby amended by adding, after section3B, the following
2 section:-

3 Section 3C. (a) For the purposes of this section the term "maximum allowable cost list"
4 shall mean a list of drugs, medical products or devices, or both medical products and devices, for
5 which a maximum allowable cost has been established by a pharmacy benefits manager or
6 covered entity. The term "maximum allowable cost" shall mean the maximum amount that a
7 pharmacy benefits manager or covered entity will reimburse a pharmacy for the cost of a drug or
8 a medical product or device inclusive of all discounts when the claim is processed or taken
9 retroactively

10 (b) Before a pharmacy benefits manager or covered entity may place a drug on a
11 maximum allowable cost list the drug must be listed as "A" or "AB" rated in the most recent
12 version of the FDA's Approved Drug Products with Therapeutic Equivalence Evaluations, also

13 known as the Orange Book, or has an "NR" or "NA" rating or a similar rating by a nationally
14 recognized reference; and that there are at least two therapeutically equivalent, multiple source
15 drugs, or at least one generic drug available from one manufacturer, available for purchase by
16 network pharmacies from national or regional wholesalers.

17 (c) If a drug that has been placed on a maximum allowable cost list no longer meets the
18 requirements of subsection (a), the drug shall be removed from the maximum allowable cost list
19 by the pharmacy benefits manager or covered entity within 3 business days after the drug no
20 longer meets the requirements of subsection (a).

21 (d) A pharmacy benefits manager or covered entity shall make available to each
22 pharmacy with which the pharmacy benefits manager or covered entity has a contract and to
23 each pharmacy included in a network of pharmacies served by a pharmacy services
24 administrative organization with which the pharmacy benefits manager or covered entity has a
25 contract, at the beginning of the term of a contract upon renewal of a contract, or upon request:

26 (1) The sources used to determine the maximum allowable costs for the drugs and
27 medical products and devices on each maximum allowable cost list;

28 (2) Every maximum allowable cost for individual drugs used by that pharmacy benefits
29 manager or covered entity for patients served by that contracted pharmacy; and

30 (3) Upon request, every maximum allowable cost list used by that pharmacy benefits
31 manager or covered entity for patients served by that contracted pharmacy.

32 (e) A pharmacy benefits manager or covered entity shall:

33 (1) Ensure the maxim allowable cost (if used) or the ingredient cost (if not used) is equal
34 to or greater than the pharmacies acquisition cost for all covered medications. A maximum
35 allowable cost equal to or greater than the National Average Drug Acquisition Cost shall be
36 deemed in compliance with the requirement to ensure it is greater than or equal to the pharmacies
37 acquisition cost.

38 (2) Ensure the maximum allowable cost for non-affiliated pharmacies is equal to or
39 greater than the maximum allowable cost to pharmacies affiliated with or owned by the
40 pharmacy benefit manager.

41 (3) The pharmacy benefit manager shall update each maximum allowable cost list at least
42 every 3 business days(4) Make the updated lists available to every pharmacy with which the
43 pharmacy benefits manager or covered entity has a contract and to every pharmacy included in a
44 network of pharmacies served by a pharmacy services administrative organization with which
45 the pharmacy benefits manager or covered entity has a contract, in a readily accessible, secure
46 and usable web-based format or other comparable format or process; and

47 (5) Utilize the updated maximum allowable costs to calculate the payments made to the
48 contracted pharmacies within 2 business days.

49 (f) A pharmacy benefits manager or covered entity shall establish a clearly defined
50 process through which a pharmacy may contest the cost for a particular drug or medical product
51 or device.

52 (g) A pharmacy may base its appeal on one or more of the following:

53 (1) The ingredient cost established for a particular drug or medical product or device is
54 below the cost at which the drug or medical product or device is generally available for purchase
55 by Massachusetts licensed wholesalers currently operating in the state; or

56 (2) The pharmacy benefits manager or covered entity has placed a drug on the maximum
57 allowable cost list without properly determining that the requirements of subsection (a).

58 (h) The pharmacy must file its appeal within seven business days of its submission of the
59 initial claim for reimbursement for the drug or medical product or device. A Pharmacy Services
60 Administrative Organization (PSAO) may appeal on behalf of a pharmacy or group of
61 pharmacies. The pharmacy benefits manager or covered entity must make a final determination
62 resolving the pharmacy's appeal within seven business days of the pharmacy benefits manager or
63 covered entity's receipt of the appeal.

64 (i) If the final determination is a denial of the pharmacy's appeal, the pharmacy benefits
65 manager or covered entity must state the reason for the denial and provide the national drug code
66 of an equivalent drug that is generally available for purchase by pharmacies in this state from
67 national or regional wholesalers licensed by the state at a price which is equal to or less than the
68 cost for that drug.

69 (j) If a pharmacy's appeal is determined to be valid by the pharmacy benefits manager or
70 covered entity, the pharmacy benefits manager or covered entity shall retroactively adjust the
71 cost of the drug or medical product or device and reprocess all claims that were paid incorrectly.
72 The adjustment shall be effective from the date the pharmacy's appeal was filed, and the
73 pharmacy benefits manager or covered entity shall provide reimbursement for all reprocessed
74 claims.

75 (k) Once a pharmacy's appeal is determined to be valid by the pharmacy benefits manager
76 or covered entity, the pharmacy benefits manager or covered entity shall adjust the cost of the
77 drug or medical product or device for all similar pharmacies in the network as determined by the
78 pharmacy benefits manager within 3 business days.

79 (l) A pharmacy benefits manager or covered entity shall make available on its secure web
80 site information about the appeals process, including, but not limited to, a telephone number or
81 process that a pharmacy may use to submit cost appeals. The medical products and devices
82 subject to the requirements of this part are limited to the medical products and devices included
83 as a pharmacy benefit under the pharmacy benefits contract.

84 (m) A pharmacy shall not disclose to any third party the cost lists and any related
85 information it receives from a pharmacy benefits manager or covered entity; provided, a
86 pharmacy may share such lists and related information with a pharmacy services administrative
87 organization or similar entity with which the pharmacy has a contract to provide administrative
88 services for that pharmacy. If a pharmacy shares this information with a pharmacy services
89 administrative organization or similar entity, that organization or entity shall not disclose the
90 information to any third party.

91 (n) A pharmacy benefits manager or covered entity is prohibited from applying
92 retroactive discounts including but not limited to Generic Effective Rate and Brand Effective
93 Rate. All discounts must be applied when the claim is paid.

94 (o) A pharmacy benefits manager or covered entity shall include payment for covered
95 medications in its explanation of benefits

96 SECTION 2. Chapter 118E Section 9B is hereby amended by adding:-

97 All MassHealth Managed Care Organizations and Accountable Care Organizations are
98 required to reimburse pharmacies at the same rate as described in the MassHealth Pharmacy
99 Provider Manual.

100 The Insurance Commissioner shall enforce this Act and shall promulgate regulations to
101 enforce the provisions of this act. The commissioner may examine or audit the books and records
102 of a pharmacy benefits manager providing claims processing services or other prescription drug
103 or device services for a health benefit plan to determine if the pharmacy benefits manager is in
104 compliance with this Act. The information or data acquired during an examination is:

105 (i) Considered proprietary and confidential; and

106 (ii) Not subject to the Freedom of Information Act of Massachusetts

107 (o) In any participation contracts between pharmacy benefits managers and pharmacists
108 or pharmacies providing prescription drug coverage for health benefit plans, no pharmacy or
109 pharmacist may be prohibited, restricted, or penalized in any way from disclosing to any covered
110 person any healthcare information that the pharmacy or pharmacist deems appropriate regarding
111 the nature of treatment, risks, or alternatives thereto, the availability of alternate therapies,
112 consultations, or tests, the decision of utilization reviewers or similar persons to authorize or
113 deny services, the process that is used to authorize or deny healthcare services or benefits, or
114 information on financial incentives and structures used by the insurer.

115 (p) Further any such contract as stated above shall not prohibit a pharmacist or pharmacy
116 from providing an insured individual information on the amount of the insured's cost share for
117 such insured's prescription drug and the clinical efficacy of a more affordable alternative drug if
118 one is available. Neither a pharmacy nor a pharmacist shall be penalized by a pharmacy benefits

119 manager for disclosing such information to an insured or for selling to an insured a more

120 affordable alternative if one is available.