HOUSE DOCKET, NO. 3470 FILED ON: 1/20/2023

HOUSE . . . . . No. 3587

The Commonwealth of Massachusetts

PRESENTED BY:

Alan Silvia

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:	DATE ADDED:
Alan Silvia	*7th Bristol*	*1/20/2023*
Paul McMurtry	*11th Norfolk*	*2/17/2023*
Carmine Lawrence Gentile	*13th Middlesex*	*6/13/2023*
James K. Hawkins	*2nd Bristol*	*6/13/2023*

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By Representative Silvia of Fall River, a petition (accompanied by bill, House, No. 3587) of Alan Silvia and Paul McMurtry 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:

SECTION 1. Chapter 176D is hereby amended by adding, after section 3B, the following section:-

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

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

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

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

(d) A pharmacy benefits manager or covered entity shall make available to each pharmacy with which the pharmacy benefits manager or covered entity has a contract and to each pharmacy included in a network of pharmacies served by a pharmacy services administrative organization

with which the pharmacy benefits manager or covered entity has a contract, at the beginning of the term of a contract upon renewal of a contract, or upon request:

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

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

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

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

(1) Ensure the maxim allowable cost (if used) or the ingredient cost (if not used) is equal to or greater than the pharmacies acquisition cost for all covered medications. A maximum allowable cost equal to or greater than the National Average Drug Acquisition Cost shall be deemed in compliance with the requirement to ensure it is greater than or equal to the pharmacies acquisition cost. (2) Ensure the maximum allowable cost for non-affiliated pharmacies is equal to or greater than the maximum allowable cost to pharmacies affiliated with or owned by the pharmacy benefit manager.

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

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

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

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

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

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

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

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

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

(k) Once a pharmacy's appeal is determined to be valid by the pharmacy benefits manager or covered entity, the pharmacy benefits manager or covered entity shall adjust the cost of the drug

or medical product or device for all similar pharmacies in the network as determined by the pharmacy benefits manager within 3 business days.

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

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

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

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

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

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

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

(i) Considered proprietary and confidential; and

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

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

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

manager for disclosing such information to an insured or for selling to an insured a more affordable alternative if one is available.