SENATE DOCKET, NO. 874 FILED ON: 1/20/2011

SENATE . . . . . No. 1107

The Commonwealth of Massachusetts

PRESENTED BY:

Robert L. Hedlund

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 Ac Act relative to prescription drug rebates.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Robert L. Hedlund	
Thomas P. Kennedy	
Bruce E. Tarr	
James J. Dwyer	*30th Middlesex*

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SENATE . . . . . No. 1107

By Mr. Hedlund, a petition (accompanied by bill, Senate, No. 1107) of Robert L. Hedlund, Thomas P. Kennedy, Bruce E. Tarr and James J. Dwyer for legislation relative to prescription drug rebates. Public Health.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act Ac Act relative to prescription drug rebates.

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. Section 3 of chapter 175H of the General 1 Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting before the word “Any”, in line 1, the following:

(a). SECTION 2. Said section 3 of said chapter 175H, as so appearing, is hereby further amended by inserting after word “rebate”, in line 7, the following words: except as provided in subsection (b).SECTION 3. Said section 3 of said chapter 175H, as so appearing, is hereby further amended by adding the following 3 subsections: (b)(1) This section shall not apply to any discount or free product vouchers that a retail pharmacy provides to a consumer in connection with a pharmacy service, item or prescription transfer offer or to any discount, rebate, product voucher or other reduction in an individual’s out-of-pocket expenses, including copayments and deductibles, on a prescription drug, biologic or vaccine, for which there does not exist a clinically proven generic equivalent, provided by a pharmaceutical manufacturing company, as defined in section 1 of chapter 111N, that is made available to an individual if the discount, rebate, product voucher or other reduction is provided directly or electronically to the individual

14 or through a point of sale or mail-in rebate, or through similar means; provided, however, that a
15 pharmaceutical manufacturing company shall not exclude nor favor any pharmacy in the
16 redemption of such discount, rebate, product voucher or other expense reduction offer to a
17 consumer. (2) If a discount, rebate, product voucher or other reduction in an individual's out-of-
18 pocket expenses is applied to a consumer's prescription, the discount, rebate, product voucher or
19 other cost reduction shall be made available for all renewals thereof. Any consumer alleging a
20 violation of this clause shall contact the department of public health or the office of consumer
21 affairs and business regulation to report the violation. If a violation of this clause is found to have
22 occurred, the pharmaceutical manufacturer or any intermediary which interfered with the
23 availability of the discount, rebate, product voucher or other cost reduction shall make the
24 discount, rebate, product voucher or other cost reduction available to the consumer for the life of
25 the prescription and pay a fine not more than $1,000 to the department of public health. (c)
26 Subsection (b) shall not: (i) restrict a pharmaceutical manufacturing company with regard to how
27 it distributes a prescription drug, biologic or vaccine; or (ii) restrict a carrier or a health
28 maintenance organization, as defined in section 1 of chapter 118G, with regard to how its plan
29 design will treat such discounts, rebates, product voucher or other reduction in out-of-pocket
30 expenses.(d) For purposes of the federal Health Insurance Portability and Accountability Act
31 of1996, hereinafter referred to as HIPAA, and regulations promulgated under HIPAA, nothing in
32 this section shall be deemed to require or allow the use or disclosure of health information in any
33 manner that does not otherwise comply with HIPAA or regulations promulgated under HIPAA.