SENATE No. 550

The Commonwealth of Massachusetts

PRESENTED BY:

Barbara A. L'Italien

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 relative to ensuring transparency of health plan formularies.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
Barbara A. L'Italien	Second Essex and Middlesex	
Paul R. Heroux	2nd Bristol	2/1/2017
Jack Lewis	7th Middlesex	2/2/2017
Patrick M. O'Connor	Plymouth and Norfolk	2/14/2017

SENATE DOCKET, NO. 367 FILED ON: 1/16/2017

SENATE No. 550

By Ms. L'Italien, a petition (accompanied by bill, Senate, No. 550) of Barbara A. L'Italien, Paul R. Heroux, Jack Lewis and Patrick M. O'Connor for legislation to ensure transparency of health plan formularies. Financial Services.

[SIMILAR MATTER FILED IN PREVIOUS SESSION SEE SENATE, NO. *519* OF 2015-2016.]

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court (2017-2018)

An Act relative to ensuring transparency of health plan formularies.

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 175 of the General Laws is hereby amended by inserting after
- 2 section 47II the following section:-
- 3 Section 47JJ.
- 4 (a) Any policy, contract, agreement, plan or certificate of insurance issued, delivered or
- 5 renewed within the commonwealth on or after January 1, 2018, shall:
- 6 (1) Provide notice in the evidence of coverage and disclosure form to enrollees regarding
- 7 whether the plan uses a formulary. The notice shall include an explanation of what a formulary
- 8 is, how the plan determines which prescription drugs are included or excluded, and how often the
- 9 plan reviews the contents of the formulary.

(2) Post the formulary or formularies for each product offered by the plan on the plan's
internet web site in a manner that is accessible and searchable by potential enrollees, enrollees,
and providers.

(3) Update the formularies posted pursuant to paragraph (2) with any change to thoseformularies within 72 hours after making the change.

(4) Use a standard template developed pursuant to subsection (b) to display the formularyor formularies for each product offered by the plan.

17 (5) Include all of the following on any published formulary for any product offered by the18 plan, including, but not limited to, the formulary or formularies posted pursuant to paragraph (2):

(i) Any prior authorization, step edit requirements, or utilization management edits foreach specific drug included on the formulary.

(ii) If the plan uses a Tier-based formulary, the plan shall specify for each drug listed on
the formulary the specific Tier the drug occupies and list the specific co-payments for each Tier
in the evidence of coverage.

(iii) For prescription drugs covered under the plans medical benefit and typically
administered by a provider, plans must disclose to enrollees and potential enrollees, all covered
drugs and the dollar cost-sharing imposed on such drugs. This information can be provided to the
consumer as part of the plan's formulary pursuant to paragraph (2) or via a toll free number that
is staffed at least during normal business hours.

(iv) For each prescription drug included on the formulary under clauses (ii) or (iii) that is
subject to a coinsurance and dispensed at an in-network pharmacy the plan must:

31 (A) disclose the dollar amount of the enrollee's cost-sharing, or

- 32 (B) the plan can provide a dollar amount range of cost sharing for a potential enrollee of
 33 each specific drug included on the formulary, as follows:
- 34 Under \$100 \$.
- 35 **\$100-\$250 \$\$**.
- 36 \$251**-**\$500 \$\$\$.
- 37 **\$500-\$1,000 \$\$\$\$**.
- 38 Over \$1,000 -- \$\$\$\$\$

(v) If the carrier allows the option for mail order pharmacy, the carrier separately must
list the range of cost-sharing for a potential enrollee if the potential enrollee purchases the drug
through a mail order facility utilizing the same ranges as provided in subclause (B).

42 (vi) A description of how medications will specifically be included in or excluded from
43 the deductible, including a description of out-of-pocket costs that may not apply to the deductible
44 for a medication.

45 (b) The Division of Insurance shall develop a standard formulary template which a health46 care service plan shall use to comply with paragraph (4).

- 47 SECTION 2. Chapter 176A of the General Laws is hereby amended by inserting after
 48 section 8KK the following section:-
- 49 Section 8LL.

(a) Any contract between a subscriber and the corporation under an individual or group
hospital service plan delivered or issued or renewed within the commonwealth on or after
January 1, 2018, shall:

(1) Provide notice in the evidence of coverage and disclosure form to enrollees regarding whether the plan uses a formulary. The notice shall include an explanation of what a formulary is, how the plan determines which prescription drugs are included or excluded, and how often the plan reviews the contents of the formulary.

(2) Post the formulary or formularies for each product offered by the plan on the plan's
internet web site in a manner that is accessible and searchable by potential enrollees, enrollees,
and providers.

60 (3) Update the formularies posted pursuant to paragraph (2) with any change to those61 formularies within 72 hours after making the change.

62 (4) Use a standard template developed pursuant to subsection (b) to display the formulary63 or formularies for each product offered by the plan.

64 (5) Include all of the following on any published formulary for any product offered by the 65 plan, including, but not limited to, the formulary or formularies posted pursuant to paragraph (2):

(i) Any prior authorization, step edit requirements, or utilization management edits for
each specific drug included on the formulary.

(ii) If the plan uses a Tier-based formulary, the plan shall specify for each drug listed on
the formulary the specific Tier the drug occupies and list the specific co-payments for each Tier
in the evidence of coverage.

71	(iii) For prescription drugs covered under the plans medical benefit and typically
72	administered by a provider, plans must disclose to enrollees and potential enrollees, all covered
73	drugs and the dollar cost-sharing imposed on such drugs. This information can be provided to the
74	consumer as part of the plan's formulary pursuant to paragraph (2) or via a toll free number that
75	is staffed at least during normal business hours.
76	(iv) For each prescription drug included on the formulary under clauses (ii) or (iii) that is
77	subject to a coinsurance and dispensed at an in-network pharmacy the plan must:
78	(A) disclose the dollar amount of the enrollee's cost-sharing, or
79	(B) the plan can provide a dollar amount range of cost sharing for a potential enrollee of
80	each specific drug included on the formulary, as follows:
81	Under \$100 – \$.
82	100-250-
83	\$251-\$500 - \$\$\$.
84	500-1,000-\$\$\$.
85	Over \$1,000 \$\$\$\$\$
86	(v) If the carrier allows the option for mail order pharmacy, the carrier separately must
87	list the range of cost-sharing for a potential enrollee if the potential enrollee purchases the drug

88 through a mail order facility utilizing the same ranges as provided in subclause (B).

(vi) A description of how medications will specifically be included in or excluded from
the deductible, including a description of out-of-pocket costs that may not apply to the deductible
for a medication.

92 (b) The Division of Insurance shall develop a standard formulary template which a health93 care service plan shall use to comply with paragraph (4).

94 SECTION 3. Chapter 176B of the General Laws is hereby amended by inserting after
95 section 4KK the following section:-

96 Section 4LL.

97 (a) Any subscription certificate under an individual or group medical service agreement
98 delivered, issued or renewed within the commonwealth on or after January 1, 2018, shall:

99 (1) Provide notice in the evidence of coverage and disclosure form to enrollees regarding
100 whether the plan uses a formulary. The notice shall include an explanation of what a formulary
101 is, how the plan determines which prescription drugs are included or excluded, and how often the
102 plan reviews the contents of the formulary.

(2) Post the formulary or formularies for each product offered by the plan on the plan's
internet web site in a manner that is accessible and searchable by potential enrollees, enrollees,
and providers.

106 (3) Update the formularies posted pursuant to paragraph (2) with any change to those107 formularies within 72 hours after making the change.

(4) Use a standard template developed pursuant to subsection (b) to display the formularyor formularies for each product offered by the plan.

(5) Include all of the following on any published formulary for any product offered by theplan, including, but not limited to, the formulary or formularies posted pursuant to paragraph (2):

(i) Any prior authorization, step edit requirements, or utilization management edits foreach specific drug included on the formulary.

(ii) If the plan uses a Tier-based formulary, the plan shall specify for each drug listed on the formulary the specific Tier the drug occupies and list the specific co-payments for each Tier in the evidence of coverage.

(iii) For prescription drugs covered under the plans medical benefit and typically administered by a provider, plans must disclose to enrollees and potential enrollees, all covered drugs and the dollar cost-sharing imposed on such drugs. This information can be provided to the consumer as part of the plan's formulary pursuant to paragraph (2) or via a toll free number that is staffed at least during normal business hours.

(iv) For each prescription drug included on the formulary under clauses (ii) or (iii) that is
subject to a coinsurance and dispensed at an in-network pharmacy the plan must:

124 (A) disclose the dollar amount of the enrollee's cost-sharing, or

(B) the plan can provide a dollar amount range of cost sharing for a potential enrollee ofeach specific drug included on the formulary, as follows:

127 Under \$100 – \$.

- 128 \$100-\$250 \$\$.
- 129 \$251-\$500 \$\$\$.

130 \$500-\$1,000	- \$\$\$\$.
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131 Over \$1,000 -- \$\$\$\$\$

(v) If the carrier allows the option for mail order pharmacy, the carrier separately must
list the range of cost-sharing for a potential enrollee if the potential enrollee purchases the drug
through a mail order facility utilizing the same ranges as provided in subclause (B).

(vi) A description of how medications will specifically be included in or excluded from
the deductible, including a description of out-of-pocket costs that may not apply to the deductible
for a medication.

(b) The Division of Insurance shall develop a standard formulary template which a healthcare service plan shall use to comply with paragraph (4).

140 SECTION 4. Chapter 176G of the General Laws is hereby amended by inserting after
141 section 4CC the following section:-

142 Section 4DD.

(a) Any individual or group health maintenance contract issued on or after January 1,2018, shall:

(1) Provide notice in the evidence of coverage and disclosure form to enrollees regarding
whether the plan uses a formulary. The notice shall include an explanation of what a formulary
is, how the plan determines which prescription drugs are included or excluded, and how often the
plan reviews the contents of the formulary.

(2) Post the formulary or formularies for each product offered by the plan on the plan's
internet web site in a manner that is accessible and searchable by potential enrollees, enrollees,
and providers.

(3) Update the formularies posted pursuant to paragraph (2) with any change to thoseformularies within 72 hours after making the change.

(4) Use a standard template developed pursuant to subsection (b) to display the formularyor formularies for each product offered by the plan.

(5) Include all of the following on any published formulary for any product offered by theplan, including, but not limited to, the formulary or formularies posted pursuant to paragraph (2):

(i) Any prior authorization, step edit requirements, or utilization management edits foreach specific drug included on the formulary.

(ii) If the plan uses a Tier-based formulary, the plan shall specify for each drug listed on
the formulary the specific Tier the drug occupies and list the specific co-payments for each Tier
in the evidence of coverage.

(iii) For prescription drugs covered under the plans medical benefit and typically
administered by a provider, plans must disclose to enrollees and potential enrollees, all covered
drugs and the dollar cost-sharing imposed on such drugs. This information can be provided to the
consumer as part of the plan's formulary pursuant to paragraph (2) or via a toll free number that
is staffed at least during normal business hours.

(iv) For each prescription drug included on the formulary under clauses (ii) or (iii) that is
subject to a coinsurance and dispensed at an in-network pharmacy the plan must:

170 (A) disclose the dollar amount of the enrollee's cost-sharing, or

- (B) the plan can provide a dollar amount range of cost sharing for a potential enrollee ofeach specific drug included on the formulary, as follows:
- 173 Under \$100 \$.
- 174 **\$100-\$250 \$\$**.
- 175 **\$251-\$500 \$\$\$**.
- 176 \$500-\$1,000 \$\$\$\$.
- 177 Over \$1,000 -- \$\$\$\$\$

(v) If the carrier allows the option for mail order pharmacy, the carrier separately must
list the range of cost-sharing for a potential enrollee if the potential enrollee purchases the drug
through a mail order facility utilizing the same ranges as provided in subclause (B).

(vi) A description of how medications will specifically be included in or excluded from
the deductible, including a description of out-of-pocket costs that may not apply to the deductible
for a medication.

(b) The Division of Insurance shall develop a standard formulary template which a healthcare service plan shall use to comply with paragraph (4).

- 186 SECTION 5. Chapter 32A of the General Laws is hereby amended by inserting after
 187 section 27 the following section:-
- 188 Section 28.

(a) Any coverage offered by the commission to any active or retired employee of the
commonwealth who is insured under the group insurance commission on or after January 1,
2018, shall:

(1) Provide notice in the evidence of coverage and disclosure form to enrollees regarding
whether the plan uses a formulary. The notice shall include an explanation of what a formulary
is, how the plan determines which prescription drugs are included or excluded, and how often the
plan reviews the contents of the formulary.

(2) Post the formulary or formularies for each product offered by the plan on the plan's
internet web site in a manner that is accessible and searchable by potential enrollees, enrollees,
and providers.

(3) Update the formularies posted pursuant to paragraph (2) with any change to thoseformularies within 72 hours after making the change.

201 (4) Use a standard template developed pursuant to subsection (b) to display the formulary202 or formularies for each product offered by the plan.

203 (5) Include all of the following on any published formulary for any product offered by the 204 plan, including, but not limited to, the formulary or formularies posted pursuant to paragraph (2):

(i) Any prior authorization, step edit requirements, or utilization management edits foreach specific drug included on the formulary.

(ii) If the plan uses a Tier-based formulary, the plan shall specify for each drug listed on
the formulary the specific Tier the drug occupies and list the specific co-payments for each Tier
in the evidence of coverage.

210	(iii) For prescription drugs covered under the plans medical benefit and typically
211	administered by a provider, plans must disclose to enrollees and potential enrollees, all covered
212	drugs and the dollar cost-sharing imposed on such drugs. This information can be provided to the
213	consumer as part of the plan's formulary pursuant to paragraph (2) or via a toll free number that
214	is staffed at least during normal business hours.
215	(iv) For each prescription drug included on the formulary under clauses (ii) or (iii) that is
216	subject to a coinsurance and dispensed at an in-network pharmacy the plan must:
217	(A) disclose the dollar amount of the enrollee's cost-sharing, or
218	(B) the plan can provide a dollar amount range of cost sharing for a potential enrollee of
219	each specific drug included on the formulary, as follows:
220	Under \$100 – \$.
221	100-250-
222	251-500-
223	\$500-\$1,000 - \$\$\$\$.
224	Over \$1,000 \$\$\$\$
225	(v) If the carrier allows the option for mail order pharmacy, the carrier separately must
226	list the range of cost-sharing for a potential enrollee if the potential enrollee purchases the drug

through a mail order facility utilizing the same ranges as provided in subclause (B).

(vi) A description of how medications will specifically be included in or excluded from
the deductible, including a description of out-of-pocket costs that may not apply to the deductible
for a medication.

(b) The Division of Insurance shall develop a standard formulary template which a healthcare service plan shall use to comply with paragraph (4).