

HOUSE No. 1104

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 generic medication.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | DATE ADDED: |
|------------------------------------|-------------------------|------------------|
| <i>Alan Silvia</i> | <i>7th Bristol</i> | <i>1/18/2019</i> |
| <i>Brian M. Ashe</i> | <i>2nd Hampden</i> | <i>1/29/2019</i> |
| <i>Carole A. Fiola</i> | <i>6th Bristol</i> | <i>1/18/2019</i> |
| <i>Patricia A. Haddad</i> | <i>5th Bristol</i> | <i>1/28/2019</i> |
| <i>Stephan Hay</i> | <i>3rd Worcester</i> | <i>1/30/2019</i> |
| <i>David Henry Argosky LeBoeuf</i> | <i>17th Worcester</i> | <i>2/1/2019</i> |
| <i>Paul A. Schmid, III</i> | <i>8th Bristol</i> | <i>1/23/2019</i> |
| <i>Timothy R. Whelan</i> | <i>1st Barnstable</i> | <i>1/22/2019</i> |
| <i>Michael O. Moore</i> | <i>Second Worcester</i> | <i>2/1/2019</i> |

HOUSE No. 1104

By Mr. Silvia of Fall River, a petition (accompanied by bill, House, No. 1104) of Alan Silvia and others relative to access to generic medications. Financial Services.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act to ensure access to generic medication.

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 section 3B, 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.

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

13 recognized reference; and that there are at least two therapeutically equivalent, multiple source
14 drugs, or at least one generic drug available from one manufacturer, available for purchase by
15 network pharmacies from national or regional wholesalers.

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

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

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

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

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

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

32 (1) Ensure the maximum allowable cost is equal to or greater than the pharmacies
33 acquisition cost and update each maximum allowable cost list at least every 3 business days;

34 (2) Make the updated lists available to every pharmacy with which the pharmacy benefits
35 manager or covered entity has a contract and to every pharmacy included in a network of
36 pharmacies served by a pharmacy services administrative organization with which the pharmacy
37 benefits manager or covered entity has a contract, in a readily accessible, secure and usable web-
38 based format or other comparable format or process; and

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

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

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

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

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

50 (h) The pharmacy must file its appeal within seven business days of its submission of the
51 initial claim for reimbursement for the drug or medical product or device. The pharmacy benefits
52 manager or covered entity must make a final determination resolving the pharmacy's appeal
53 within seven business days of the pharmacy benefits manager or covered entity's receipt of the
54 appeal.

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

60 (j) If a pharmacy's appeal is determined to be valid by the pharmacy benefits manager or
61 covered entity, the pharmacy benefits manager or covered entity shall adjust the maximum
62 allowable cost of the drug or medical product or device for the appealing pharmacy. The
63 adjustment for the appealing pharmacy shall be effective from the date the pharmacy's appeal
64 was filed, and the pharmacy benefits manager or covered entity shall provide reimbursement to
65 the appealing pharmacy and may require the appealing pharmacy to reverse and rebill the claim
66 in question in order to receive the corrected reimbursement.

67 (k) Once a pharmacy's appeal is determined to be valid by the pharmacy benefits manager
68 or covered entity, the pharmacy benefits manager or covered entity shall adjust the maximum
69 allowable cost of the drug or medical product or device to which the maximum allowable cost
70 applies for all similar pharmacies in the network as determined by the pharmacy benefits
71 manager within 3 business days.

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

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

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

90 (i) Considered proprietary and confidential; and

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

92 (o) In any participation contracts between pharmacy benefits managers and pharmacists
93 or pharmacies providing prescription drug coverage for health benefit plans, no pharmacy or
94 pharmacist may be prohibited, restricted, or penalized in any way from disclosing to any covered
95 person any healthcare information that the pharmacy or pharmacist deems appropriate regarding
96 the nature of treatment, risks, or alternatives thereto, the availability of alternate therapies,
97 consultations, or tests, the decision of utilization reviewers or similar persons to authorize or

98 deny services, the process that is used to authorize or deny healthcare services or benefits, or
99 information on financial incentives and structures used by the insurer.

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