

**SENATE . . . . . No. 642**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

***Brendan P. Crighton***

*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 empowering health care consumers.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Brendan P. Crighton</i>	<i>Third Essex</i>	
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>	<i>2/25/2021</i>
<i>Patrick M. O'Connor</i>	<i>Plymouth and Norfolk</i>	<i>2/26/2021</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>2/26/2021</i>
<i>Patrick Joseph Kearney</i>	<i>4th Plymouth</i>	<i>3/1/2021</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>3/5/2021</i>
<i>Carol A. Doherty</i>	<i>3rd Bristol</i>	<i>3/30/2021</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>	<i>3/31/2021</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>6/15/2021</i>

**SENATE . . . . . No. 642**

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By Mr. Crighton, a petition (accompanied by bill, Senate, No. 642) of Brendan P. Crighton, Elizabeth A. Malia, Patrick M. O'Connor, Jack Patrick Lewis and other members of the General Court for legislation to empower health care consumers. Financial Services.

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**The Commonwealth of Massachusetts**

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**In the One Hundred and Ninety-Second General Court  
(2021-2022)**  
\_\_\_\_\_

An Act empowering health care consumers.

*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.

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

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

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

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

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

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

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

29 (iv) For each prescription drug included on the formulary under clauses (ii) or (iii) that is  
30 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 -- \$\$\$\$\$

39 (v) If the carrier allows the option for mail order pharmacy, the carrier separately must  
40 list the range of cost-sharing for a potential enrollee if the potential enrollee purchases the drug  
41 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 health  
46 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.

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

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

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

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

62 (4) Use a standard template developed pursuant to subsection (b) to display the formulary  
63 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):

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

68 (ii) If the plan uses a Tier-based formulary, the plan shall specify for each drug listed on  
69 the formulary the specific Tier the drug occupies and list the specific co-payments for each Tier  
70 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).

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

92 (b) The Division of Insurance shall develop a standard formulary template which a health  
93 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.

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

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

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

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

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

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

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

122 (iv) For each prescription drug included on the formulary under clauses (ii) or (iii) that is  
123 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

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

127 Under \$100 – \$.

128 \$100-\$250 – \$\$.

129 \$251-\$500 – \$\$\$.



130 \$500-\$1,000 – \$\$\$\$.

131 Over \$1,000 -- \$\$\$\$\$

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

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

138 (b) The Division of Insurance shall develop a standard formulary template which a health  
139 care 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.

143 (a) Any individual or group health maintenance contract issued on or after January 1,  
144 2018, shall:

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

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

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

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

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

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

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

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

168 (iv) For each prescription drug included on the formulary under clauses (ii) or (iii) that is  
169 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

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

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174 \$100-\$250 – \$\$.

175 \$251-\$500 – \$\$\$.

176 \$500-\$1,000 – \$\$\$\$.

177 Over \$1,000 -- \$\$\$\$\$

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

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

184 (b) The Division of Insurance shall develop a standard formulary template which a health  
185 care 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.

189 (a) Any coverage offered by the commission to any active or retired employee of the  
190 commonwealth who is insured under the group insurance commission on or after January 1,  
191 2018, shall:

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

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

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

201 (4) Use a standard template developed pursuant to subsection (b) to display the formulary  
202 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):

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

207 (ii) If the plan uses a Tier-based formulary, the plan shall specify for each drug listed on  
208 the formulary the specific Tier the drug occupies and list the specific co-payments for each Tier  
209 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  
227 through a mail order facility utilizing the same ranges as provided in subclause (B).

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

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