

SENATE No. 684

The Commonwealth of Massachusetts

PRESENTED BY:

Patricia D. Jehlen

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 reduce the cost of pharmacy benefits.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	
<i>Brian W. Murray</i>	<i>10th Worcester</i>	<i>2/24/2021</i>

SENATE No. 684

By Ms. Jehlen, a petition (accompanied by bill, Senate, No. 684) of Patricia D. Jehlen and Brian W. Murray for legislation to reduce the cost of pharmacy benefits. Financial Services.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 601 OF 2019-2020.]

The Commonwealth of Massachusetts

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

An Act to reduce the cost of pharmacy benefits.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 175 of the General Laws, as appearing in the 2016 Official Edition, is hereby
2 amended by inserting after Section 226, the following:-

3 Section 226A. (a) The following words, as used in this chapter, unless the context
4 otherwise requires or a different meaning is specifically prescribed, shall have the following
5 meanings:

6 “Pharmacy benefit manager”, a person, business, or other entity that, pursuant to a
7 contract or under an employment relationship with a health carrier, a self-insurance plan, or other
8 third-party payer, either directly or through an intermediary, manages the prescription drug
9 coverage provided by the health carrier, self-insurance plan, or other third-party payer including,
10 but not limited to, the processing and payment of claims for prescription drugs, the performance

11 of drug utilization review, the processing of drug prior authorization requests, the adjudication of
12 appeals or grievances related to prescription drug coverage, contracting with network
13 pharmacies, and controlling the cost of covered prescription drugs.

14 “Health carrier”, an entity subject to the insurance laws and regulations of Massachusetts,
15 or subject to the jurisdiction of the commissioner, that contracts or offers to contract, or enters
16 into an agreement to provide, deliver, arrange for, pay for, or reimburse any of the cost of health
17 care services, including a health insurance company, a health maintenance organization, a
18 hospital and health services corporation, or any other entity providing a plan of health insurance,
19 health benefits, or health care services.

20 “Health benefit plan”, a policy, contract, certificate or agreement offered or issued by a
21 health carrier to provide, deliver, arrange for, pay for or reimburse any of the costs of healthcare
22 services.

23 “Covered person”, a policyholder, subscriber, enrollee or other individual participating in
24 a health benefit plan. A covered person includes the authorized representative of the covered
25 person.

26 “Pharmacy”, an established location, either physical or electronic that is licensed in
27 Massachusetts and that has entered into a network contract with a pharmacy benefit manager
28 and/or health carrier.

29 “Network pharmacy”, a retail or other licensed pharmacy provider that contracts with a
30 pharmacy benefit manager.

31 “Retail pharmacy”, a chain pharmacy, a supermarket pharmacy, a mass merchandiser
32 pharmacy, an independent pharmacy, or a network of independent pharmacies that is licensed as
33 a pharmacy pursuant to MGL c. 112 and that dispenses medications to the public.

34 “Mail order pharmacy”, a pharmacy whose primary business is to receive prescriptions
35 by mail, telefax or through electronic submissions and to dispense medication to covered
36 persons through the use of the United States mail or other common or contract carrier services
37 and that provides any consultation with patients electronically rather than face to face.

38 “Aggregate retained rebate percentage”, the percentage of all rebates paid by a
39 manufacturer or other entity to a pharmacy benefit manager which is not passed on to pharmacy
40 benefit managers’ health carrier clients. The percentage shall be calculated for each health carrier
41 and includes rebates in the prior calendar years as follows: a) the sum total dollar amount of
42 rebates received from all pharmaceutical manufacturers for covered persons of the health carrier
43 that was not passed through to the health carrier; and b) divided by the sum total dollar amount
44 of all rebates received from all pharmaceutical manufacturers for covered persons of the health
45 carrier.

46 “Rebates”, all price concessions paid by a manufacturer to a pharmacy benefit manager
47 or health carrier, including rebates, discounts, administrative fees and other price concessions.
48 Rebates also include price concessions based on the effectiveness a drug as in a value-based or
49 performance-based contract.

50 “Trade secrets”, anything tangible which constitutes, represents evidences or records a
51 secret scientific, technical, merchandising, production or management information, design,
52 process, procedure, formula, invention or improvement.

53 “Cost share/cost sharing”, the amount paid by or on behalf of a covered person as
54 required under the covered person’s health benefit plan.

55 (b)(1) A pharmacy benefit manager shall not require pharmacy or other provider
56 accreditation standards or certification requirements inconsistent with the requirements of the
57 Massachusetts Board of Registration in Pharmacy or other state or federal entity.

58 (2) A health carrier or pharmacy benefit manager is prohibited from requiring a covered
59 person to, or penalizing covered persons for not using specific retail, mail order pharmacy or
60 other network pharmacy provider in which a pharmacy benefit manager has an ownership
61 interest or that has an ownership interest in a pharmacy benefit manager.

62 (3) A health carrier or pharmacy benefit manager is prohibited from providing financial
63 incentives, including variations in premiums, deductibles, copayments, or coinsurance, to
64 covered persons as incentives to use specific retail, mail order pharmacy, or other network
65 pharmacy provider in which a pharmacy benefit manager has an ownership interest or that has an
66 ownership interest in a pharmacy benefit manager.

67 (4) A pharmacy benefit manager is prohibited from charging a health carrier or health
68 benefit plan more than what was paid to the pharmacy that provided the service.

69 (5) Beginning June 1, 2022, and annually thereafter, each pharmacy benefit manager
70 providing service to a health carrier located in the Commonwealth of Massachusetts shall submit
71 a transparency report containing data from the prior calendar year to the division of insurance.
72 The transparency report shall be the result of a financial audit by a certified public accounting
73 firm. The requirements of the financial audit will be developed by the health policy commission.

74 The transparency report shall contain the following and additional information as deemed
75 necessary by the commission:

76 i. The aggregate amount of all rebates that the pharmacy benefit manager received from
77 all pharmaceutical manufacturers for all health carrier clients and for each health carrier client;

78 ii. The aggregate administrative fees that the pharmacy benefit manager received from all
79 manufacturers for each health carrier;

80 iii. The aggregate retained rebates that the pharmacy benefit manager received from all
81 pharmaceutical manufacturers and did not pass through to each health carrier;

82 iv. The aggregate retained rebate percentage for all health carriers; and

83 v. The highest, lowest, and mean aggregate retained rebate percentage for all health
84 carrier clients.

85 (6) A pharmacy benefit manager providing information under this section may designate
86 material as a trade secret.

87 (7) The attorney general of the Commonwealth of Massachusetts may impose civil fines
88 and penalties of not more than \$1,000 per day per violation of this section.

89 (8) The division of insurance shall collect these reports and make them available to the
90 health policy commission. Within 90 days of the receipt of the transparency reports the health
91 policy commission shall publish a pharmacy benefit manager transparency report and make it
92 available to the public. The purpose of the report is to provide information on the total cost of
93 pharmacy benefit management services and to allow insurers and others to negotiate cost-

- 94 effective contracts. The health policy commission shall protect the identity of each pharmacy
- 95 benefit manager.