

HOUSE No. 1016

The Commonwealth of Massachusetts

PRESENTED BY:

Sean Garballey

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 enact pharmacy benefit manager duties.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Sean Garballey</i>	<i>23rd Middlesex</i>	<i>1/18/2023</i>

HOUSE No. 1016

By Representative Garballey of Arlington, a petition (accompanied by bill, House, No. 1016) of Sean Garballey relative to pharmacy benefit managers and the processing and payment of claims for prescription drugs. Financial Services.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act to enact pharmacy benefit manager duties.

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: The General Laws are hereby amended by inserting after Chapter 175M
2 following new chapter:

3 CHAPTER 175N. Pharmacy Benefit Manager Duty of Care.

4 Section 1. Definitions

5 As used in this chapter, the following words shall, unless the context clearly requires
6 otherwise, have the following meanings:—

7 “Carrier”, any health insurance issuer that is subject to state law regulating insurance and
8 offers health insurance coverage, as defined in 42 U.S.C. § 300gg-91, or any state or local
9 governmental employer plan.

10 “Commissioner”, the commissioner of insurance.

11 “Division”, the division of insurance.

12 “Enrollee”, any individual entitled to coverage of health care services from a carrier.

13 “Health benefit plan”, a policy, contract, certificate, or agreement entered into, offered or
14 issued by a carrier to provide, deliver, arrange for, pay for, or reimburse any of the costs of
15 health care services.

16 “Person”, a natural person, corporation, mutual company, unincorporated association,
17 partnership, joint venture, limited liability company, trust, estate, foundation, not-for-profit
18 corporation, unincorporated organization, government or governmental subdivision or agency.

19 “Pharmacy benefit management fee”, a fee that covers the cost of providing one or more
20 pharmacy benefit management services and that does not exceed the value of the service or
21 services actually performed by the pharmacy benefit manager.

22 “Pharmacy benefit management service”:

23 (i) Negotiating the price of prescription drugs, including negotiating and contracting for
24 direct or indirect rebates, discounts, or other price concessions.

25 (ii) Managing any aspect(s) of a prescription drug benefit, including but not limited to,
26 the processing and payment of claims for prescription drugs, the performance of utilization
27 review, the processing of drug prior authorization requests, the adjudication of appeals or
28 grievances related to the prescription drug benefit, contracting with network pharmacies,
29 controlling the cost of covered prescription drugs, managing data relating to the prescription drug
30 benefit, or the provision of services related thereto.

31 (iii) Performing any administrative, managerial, clinical, pricing, financial,
32 reimbursement, data administration or reporting, or billing service; and

33 (iv) Such other services as the commissioner may define in regulation.

34 “Pharmacy benefit manager”, any person that, pursuant to a written agreement with a
35 carrier or health benefit plan, either directly or indirectly, provides one or more pharmacy benefit
36 management services on behalf of the carrier or health benefit plan, and any agent, contractor,
37 intermediary, affiliate, subsidiary, or related entity of such person who facilitates, provides,
38 directs, or oversees the provision of the pharmacy benefit management services.

39 “Pharmacy benefit manager duty”, a duty and obligation to perform pharmacy benefit
40 management services with care, skill, prudence, diligence, fairness, transparency, and
41 professionalism, and for the best interests of the enrollee, the health benefit plan, and the
42 provider, as consistent with the requirements of this section and any regulations that may be
43 adopted to implement this chapter.

44 “Provider”, an individual or entity that provides, dispenses, or administers one or more
45 units of a prescription drug.

46 “Related entity”:

47 (i) any entity, whether foreign or domestic, that is a member of any controlled group of
48 corporations (as defined in section 1563(a) of the Internal Revenue Code, except that “50
49 percent” shall be substituted for “80 percent” wherever the latter percentage appears in such
50 code) of which a pharmacy benefit manager is a member; or

51 (ii) any of the following persons or entities that are treated as a related entity to the extent
52 provided in rules adopted by the commissioner:

53 (A) a person other than a corporation that is treated under such rules as a related entity of
54 a pharmacy benefit manager, or

55 (B) a person or entity that is treated under such rules as affiliated with a pharmacy benefit
56 manager in cases where the pharmacy benefit manager is a person other than a corporation.

57 “Spread pricing”, any amount charged or claimed by a pharmacy benefit manager in
58 excess of the ingredient cost for a dispensed prescription drug plus dispensing fee paid directly
59 or indirectly to any pharmacy, pharmacist, or other provider on behalf of the health benefit plan,
60 less a pharmacy benefit management fee.

61 Section 2. Pharmacy Benefit Manager Duties

62 (a) Pharmacy benefit manager duty. A pharmacy benefit manager shall owe the pharmacy
63 benefit manager duty to any enrollee, health benefit plan, or provider that receives pharmacy
64 benefit management services from the pharmacy benefit manager or that furnishes, covers,
65 receives, or is administered a unit of a prescription drug for which the pharmacy benefit manager
66 has provided pharmacy benefit management services.

67 (1) Duty to enrollees. The pharmacy benefit manager duty owed to enrollees shall include
68 duties of care and good faith and fair dealing. The commissioner shall adopt regulations defining
69 the scope of the duties owed to enrollees, including by obligating pharmacy benefit managers to
70 provide all pharmacy benefit management services related to formulary design, utilization

71 management, and grievances and appeals in a transparent manner to enrollees that is consistent
72 with the best interest of enrollees and to disclose all conflicts of interest to enrollees.

73 (2) Duty to health benefit plans. The pharmacy benefit manager duty owed to health
74 benefit plans shall include duties of care and good faith and fair dealing. The commissioner shall
75 adopt regulations defining the scope of the duties owed to health benefit plans, including by
76 obligating pharmacy benefit managers to provide transparency to health benefit plans about
77 amounts charged or claimed by the pharmacy benefit manager in a manner that is adequate to
78 identify any instances of spread pricing and to disclose all conflicts of interest to health benefit
79 plans.

80 (3) Duty to providers. The pharmacy benefit manager duty owed to providers shall
81 include duties of care and good faith and fair dealing. The commissioner shall adopt regulations
82 defining the scope of the duties owed to providers, including by obligating pharmacy benefit
83 managers to provide transparency to providers about amounts charged or claimed by the
84 pharmacy benefit manager in a manner that is adequate to identify any instances of spread
85 pricing and to disclose all conflicts of interest to providers.

86 (b) Conflicts of interest. Where there is a conflict between the pharmacy benefit manager
87 duties owed under this section, the pharmacy benefit manager duty owed to an enrollee shall be
88 primary over the duty owed to any other party, and the pharmacy benefit manager duty owed to a
89 provider shall be primary over the duty owed to a health benefit plan.

90 Section 3. Savings Clause

91 (a) In implementing the requirements of this Act, the state shall only regulate a pharmacy
92 benefit manager, carrier, or health benefit plan to the extent permissible under applicable law.

93 (b) If any section, provision, or portion of this Act, including any condition or
94 prerequisite to any action or determination thereunder, is for any reason held to be illegal or
95 invalid, this illegality or invalidity shall not affect the remainder thereof or any other section,
96 provision, or portion of this Act, including any condition or prerequisite to any action or
97 determination thereunder, which shall be construed and enforced and applied as if such illegal or
98 invalid portion were not contained therein.

99 Section 4. Penalties

100 (a) If the commissioner determines that a pharmacy benefit manager is in violation of this
101 chapter or any rule or regulation promulgated under this chapter, the commissioner shall issue a
102 monetary penalty, suspend or revoke the pharmacy benefit manager's license or take other action
103 that the commissioner deems necessary.

104 (b) The commissioner shall issue rules and regulations to establish a process for
105 administrative appeal of any penalty, suspension or revocation imposed in accordance with this
106 section.

107 Section 5. Rules

108 The commissioner shall adopt any written policies, procedures, or regulations the
109 commissioner determines necessary to implement this section.