

HOUSE No. 1148

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 relative to prescription drug pricing.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Alan Silvia</i>	<i>7th Bristol</i>	<i>1/12/2023</i>

HOUSE No. 1148

By Representative Silvia of Fall River, a petition (accompanied by bill, House, No. 1148) of Alan Silvia relative to prescription drug pricing. Financial Services.

The Commonwealth of Massachusetts

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

An Act relative to prescription drug pricing.

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 is hereby amended by inserting after section 226 the
2 following section:-

3 Section 226A. (a) The following terms, as used in this section, shall, unless the context
4 requires otherwise, have the following meanings:—

5 “Commissioner”, the commissioner of insurance.

6 “Covered entity”, a nonprofit hospital or medical service organization, insurer, health
7 coverage plan or health maintenance organization; a health program administered by the
8 commonwealth in the capacity of provider of health coverage; or an employer, labor union, or
9 other entity organized in the state that provides health coverage to covered individuals who are
10 employed or reside in the state. This term does not include a health plan that provides coverage
11 only for accidental injury, specified disease, hospital indemnity, disability income, or other

12 limited benefit health insurance policies and contracts that do not include prescription drug
13 coverage.

14 “Covered individual”, a member, participant, enrollee, contract holder or policy holder or
15 beneficiary of a covered entity who is provided health coverage by the covered entity. A covered
16 individual includes any dependent or other person provided health coverage through a policy,
17 contract or plan for a covered individual.

18 “Maximum allowable cost” or “MAC”, the list of drug products delineating the
19 maximum per-unit reimbursement for multiple-source prescription drugs, medical product or
20 device.

21 “Multisource drug product reimbursement”, the total amount paid to a pharmacy
22 inclusive of any reduction in payment to the pharmacy, excluding prescription dispense fees.

23 “Pharmacy benefits management”, a service provided to covered entities to facilitate the
24 provision of prescription drug benefits to covered individuals within the state, including
25 negotiating pricing and other terms with drug manufacturers and providers. Pharmacy benefits
26 management may include any or all of the following services:

27 a. claims processing, retail network management and payment of claims to pharmacies
28 for prescription drugs dispensed to covered individuals,

29 b. clinical formulary development and management services,

30 c. rebate contracting and administration,

31 d. certain patient compliance, therapeutic intervention and generic substitution programs,

32 or

33 e. disease management programs;

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35 “Pharmacy benefits manager” or “PBM”, a person, business or other entity that performs
36 pharmacy benefits management. The term includes a person or entity acting for a PBM in a
37 contractual or employment relationship in the performance of pharmacy benefits management
38 for a managed care company, nonprofit hospital, medical service organization, insurance
39 company, third-party payor, or a health program administered by an agency of this state;

40 “Plan sponsor”, the employers, insurance companies, unions and health maintenance
41 organizations or any other entity responsible for establishing, maintaining, or administering a
42 health benefit plan on behalf of covered individuals; and

43

44 “Provider”, a pharmacy licensed by the board of registration in pharmacy, or an agent or
45 representative of a pharmacy, including, but not limited to, the pharmacy’s contracting agent,
46 which dispenses prescription drugs or devices to covered individuals.

47 (b) In order to provide pharmacy benefits management or any of the services included
48 under the definition of pharmacy benefits management in the commonwealth, a pharmacy
49 benefits manager or any entity acting as one in a contractual or employment relationship for a
50 covered entity shall first obtain a license from the commissioner, and the commissioner may
51 charge a fee for such licensure.

52

53 (c) The commissioner shall establish, by regulation, licensure procedures, required
54 disclosures for pharmacy benefits managers and other rules as may be necessary for carrying out
55 and enforcing the provisions of this section. The licensure procedures shall, at a minimum,
56 include the completion of an application form that shall include the name and address of an agent
57 for service of process, the payment of a requisite fee, and evidence of the procurement of a
58 surety bond.

59

60 (d) The commissioner may subpoena witnesses and information and may take and copy
61 records for investigative use and prosecutions. Nothing in this subsection shall limit the attorney
62 general from using its investigative demand authority to investigate and prosecute violations of
63 the law.

64 (e) The commissioner may suspend, revoke or refuse to issue or renew a license for
65 noncompliance with any of the provisions hereby established or with the rules promulgated by
66 the commissioner; for conduct likely to mislead, deceive or defraud the public or the
67 commissioner; for unfair or deceptive business practices or for nonpayment of a renewal fee or
68 fine. The commissioner may also levy administrative fines for each count of which a PBM has
69 been convicted in a hearing.

70

71 (f) A pharmacy benefits manager shall provide, upon request by the covered entity,
72 information regarding the difference in the amount paid to providers for prescription services
73 rendered to covered individuals and the amount billed by the pharmacy benefits manager to the
74 covered entity or plan sponsor to pay for prescription services rendered to covered individuals.

75 (g) The pharmacy benefits manager shall, with respect to contracts between a pharmacy
76 benefits manager and a provider, including a pharmacy service administrative organization:

77 1. Include in such contracts the specific sources utilized to determine the maximum
78 allowable cost pricing of the pharmacy, update MAC pricing at least every 7 calendar days, and
79 establish a process for providers to readily access the MAC list specific to that provider;

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81 2. In order to place a drug on the MAC list, ensure that the drug is listed as “A” or “B”
82 rated in the most recent version of the FDA’s Approved Drug Products with Therapeutic
83 Equivalence Evaluations, also known as the Orange Book, and the drug is generally available for
84 purchase by pharmacies in the state from national or regional wholesalers and is not obsolete;

85 3. Ensure dispensing fees are not included in the calculation of MAC price
86 reimbursement to pharmacy providers;

87 4. Provide a reasonable administration appeals procedure to allow a provider, a provider’s
88 representative and a pharmacy service administrative organization to contest reimbursement
89 amounts within 14 business days of the final adjusted payment date. The pharmacy benefits
90 manager shall not prevent the pharmacy or the pharmacy service administrative organization
91 from filing reimbursement appeals in an electronic batch format. The pharmacy benefits manager
92 must respond to a provider, a provider’s representative and a pharmacy service administrative
93 organization who have contested a reimbursement amount through this procedure within 10
94 business days. The pharmacy benefits manager must respond in an electronic batch format to
95 reimbursement appeals filed in an electronic batch format. The pharmacy benefits manager shall
96 not require a pharmacy or pharmacy services administrative organization to log into a system to

97 upload individual claim appeals or to download individual appeal responses. If a price update is
98 warranted, the pharmacy benefits manager shall make the change in the reimbursement amount,
99 permit the dispensing pharmacy to reverse and rebill the claim in question, and make the
100 reimbursement amount change retroactive and effective for all contracted providers; and

101 5. If a below-cost reimbursement appeal is denied, the PBM shall provide the reason for
102 the denial, including the National Drug Code number from the specific national or regional
103 wholesalers where the drug is available for purchase by the dispensing pharmacy at a price
104 below the PBM's reimbursement price. If the pharmacy benefits manager cannot provide a
105 specific national or regional wholesaler where the drug can be purchased by the dispensing
106 pharmacy at a price below the pharmacy benefits manager's reimbursement price, the pharmacy
107 benefits manager shall immediately adjust the reimbursement amount, permit the dispensing
108 pharmacy to reverse and rebill the claim in question, and make the reimbursement amount
109 adjustment retroactive and effective for all contracted providers.

110 (h) The pharmacy benefits manager shall not place a drug on a MAC list, unless there are
111 at least 2 therapeutically equivalent, multiple-source drugs, generally available for purchase by
112 dispensing retail pharmacies from national or regional wholesalers.

113

114 (i) The pharmacy benefits manager shall not require accreditation or licensing of
115 providers, or any entity licensed or regulated by the board of registration in pharmacy, other than
116 by the board of registration in pharmacy or federal government entity as a condition for
117 participation as a network provider.

118

119 (j) A pharmacy or pharmacist may decline to provide the pharmacist clinical or
120 dispensing services to a patient or pharmacy benefits manager if the pharmacy or pharmacist is
121 to be paid less than the pharmacy's cost for providing the pharmacist clinical or dispensing
122 services.

123

124 (k) The pharmacy benefits manager shall provide a dedicated telephone number, email
125 address and names of the personnel with decision-making authority regarding MAC appeals and
126 pricing.