

HOUSE No. 1167

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>1/16/2025</i>

HOUSE No. 1167

By Representative Garballey of Arlington, a petition (accompanied by bill, House, No. 1167) of Sean Garballey relative to pharmacy benefit manager duties. Financial Services.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Fourth General Court
(2025-2026)**

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. Chapter 176Y of the General Laws is hereby amended by inserting after
2 section 4 the following new section:-

3 Section 5.

4 (a) As used in this section, the following words shall, unless the context clearly
5 requires otherwise, have the following meanings:

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

9 (2) “Enrollee”, individual entitled to coverage of health care services from a carrier.

10 (3) “Health benefit plan”, a policy, contract, certificate, or agreement entered into,
11 offered or issued by a carrier to provide, deliver, arrange for, pay for, or reimburse any of the
12 costs of health care services.

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

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

20 (6) “Pharmacy benefit management service”:

21 (i) Negotiating the price of prescription drugs, including negotiating and contracting
22 for direct or indirect rebates, discounts, or other price concessions;

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

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

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

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

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

42 (9) “Provider”, an individual or entity that provides, dispenses, or administers one or
43 more units of a prescription drug.

44 (10) “Related entity”:

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

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

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

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

55 (11) “Spread pricing”, means any amount retained, charged, or claimed by a pharmacy
56 benefit manager (including rebates) in excess of the ingredient cost for a dispensed prescription
57 drug plus dispensing fee paid directly or indirectly to any pharmacy, pharmacist, or other
58 provider on behalf of the health benefit plan, less any pharmacy benefit management fees.

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

64 (1) The pharmacy benefit manager duty owed to enrollees shall include duties of care
65 and good faith and fair dealing. The commissioner shall adopt regulations defining the scope of
66 the duties owed to enrollees, including by obligating pharmacy benefit managers to provide all
67 pharmacy benefit management services related to formulary design, utilization management, and
68 grievances and appeals in a transparent manner to enrollees that is consistent with the best
69 interest of enrollees and to disclose all conflicts of interest to enrollees.

70 (2) The pharmacy benefit manager duty owed to health benefit plans shall include
71 duties of care and good faith and fair dealing. The commissioner shall adopt regulations defining
72 the scope of the duties owed to health benefit plans, including by obligating pharmacy benefit

73 managers to provide transparency to health benefit plans about amounts charged or claimed by
74 the pharmacy benefit manager in a manner that is adequate to identify any instances of spread
75 pricing and to disclose all conflicts of interest to health benefit plans.

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

82 (c) Where there is a conflict between the pharmacy benefit manager duties owed
83 under this section, the pharmacy benefit manager duty owed to an enrollee shall be primary over
84 the duty owed to any other party, and the pharmacy benefit manager duty owed to a provider
85 shall be primary over the duty owed to a health benefit plan.

86 (d) In implementing the requirements of this section, the state shall only regulate a
87 pharmacy benefit manager, carrier, or health benefit plan to the extent permissible under
88 applicable law.

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

95 (f) If the commissioner determines that a pharmacy benefit manager is in violation of
96 this section or any rule or regulation promulgated under this section, the commissioner shall
97 issue a monetary penalty, suspend or revoke the pharmacy benefit manager's license or take
98 other action that the commissioner deems necessary.

99 (g) The commissioner shall issue rules and regulations to establish a process for
100 administrative appeal of any penalty, suspension or revocation imposed in accordance with this
101 section.

102 (h) The commissioner shall adopt any written policies, procedures, or regulations the
103 commissioner determines necessary to implement this section.