

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

---

**The Commonwealth of Massachusetts**

PRESENTED BY:

*Bruce E. Tarr*

*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 ensure access to prescription medication and community pharmacies.

PETITION OF:

NAME:

*Bruce E. Tarr*

DISTRICT/ADDRESS:

*First Essex and Middlesex*

SENATE . . . . . No.

[Pin Slip]

The Commonwealth of Massachusetts

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

An Act to ensure access to prescription medication and community pharmacies.

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 is hereby amended by adding the following new section:-

2 Section 226A Contracts for Community Pharmacy Services

3 "Brand name drug", a drug that is: (i) produced or distributed pursuant to an original new  
4 drug application approved under 21 U.S.C. 355(c) except for: (A) any drug approved through an  
5 application submitted under section 505(b)(2) of the Federal Food, Drug, and Cosmetic Act that  
6 is pharmaceutically equivalent, as that term is defined by the United States Food and Drug  
7 Administration, to a drug approved under 21 U.S.C. 355(c); (B) an abbreviated new drug 407  
8 application that was approved by the United States Secretary of Health and Human Services  
9 under section 505(c) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 355(c), before the  
10 date of the enactment of the federal Drug Price Competition and Patent Term Restoration Act of  
11 19 of 58 1984, Public Law 98-417, 98 Stat. 1585; or (C) an authorized generic drug as defined in  
12 42 C.F.R. 447.502; (ii) produced or distributed pursuant to a biologics license application

13 approved 412 under 42 U.S.C. 262(a)(2)(C); or (iii) identified by the health benefit plan as a  
14 brand name drug based on available data resources such as Medi-Span.

15 “Generic drug”, a retail drug that is: (i) marketed or distributed pursuant to an  
16 abbreviated new drug application approved under 21 U.S.C. 355(j); (ii) an authorized generic  
17 drug as defined in 42 C.F.R. 447.502; (iii) a drug that entered the market before January 1, 1962  
18 and was not originally marketed under a new drug application; or (iv) identified by the health  
19 benefit plan as a generic drug based on available data resources such as Medi-Span.

20 “Pharmacy Audit”, a process that involves the inspection of pharmacy records to ensure  
21 high quality services and the lack of Fraud Waste, and Abuse. This includes desk audits as well  
22 as in-person audits.

23 “Pharmacy Benefit Manager” as defined in MGL c 175 Section 226 (a).

24 Pharmacy Steering” A practice employed by a pharmacy benefit manager or carrier that  
25 channels a prescription to a pharmacy in which a pharmacy benefit manager or carrier has an  
26 ownership interest, and includes and is not limited to retail, mail order, or specialty pharmacy.

27 “Specialty Medications” medications that have a complex profile that require intensive  
28 patient management or special handling.

29 Section 1: Network Pharmacies and Payment for pharmacy services

30 A contract for pharmacy services between a pharmacy benefit manager and a pharmacy  
31 must include an ingredient cost that meets the criteria in section 2 and a dispensing fee equal be  
32 no less than what is paid by the State Medicaid Program. Payment for clean claims must include

33 all applicable discounts. Contracts that include retroactive discounts and use “Generic Effective  
34 Rate” or “Brand Effective Rate” or any other similar retroactive rate reductions are prohibited.

35 Payment for pharmacy services to non-affiliated pharmacies must be equal to or greater  
36 than payment to pharmacies affiliated with or owned by the pharmacy benefit manager.

37 A pharmacy benefit manager shall not engage in pharmacy steering.

38 A pharmacy benefit manager must allow any pharmacy licensed in Massachusetts to  
39 provide any medication including “specialty medications” if the pharmacy is willing to provide  
40 the required services. The required services must be the same among all pharmacies.

41 Requirements to provide specialty pharmacy medications cannot be designed to exclude  
42 community pharmacies

#### 43 Section 2: Ingredient and Maximum Allowable Cost

44 (a) For the purposes of this section the term "maximum allowable cost list" shall mean a  
45 list of drugs, medical products or devices, or both medical products and devices, for which a  
46 maximum allowable cost has been established by a pharmacy benefits manager or covered entity.  
47 The term "maximum allowable cost" shall mean the maximum amount that a pharmacy benefits  
48 manager or covered entity will reimburse a pharmacy for the cost of a drug or a medical product  
49 or device inclusive of all discounts when the claim is processed or taken retroactively.

50 (b) The maximum allowable cost (if used) or the ingredient cost (if not used) must be equal  
51 to or greater than the cost used by the Massachusetts Medicaid Program

52 (c) The maximum allowable cost for non-affiliated pharmacies must be equal to or  
53 greater than the maximum allowable cost to pharmacies affiliated with or owned by the  
54 pharmacy benefit manager.

55 (d) Before a pharmacy benefits manager or covered entity may place a drug on a  
56 maximum allowable cost list the drug must be listed as "A" or "AB" rated in the most recent  
57 version of the FDA's Approved Drug Products with Therapeutic Equivalence Evaluations, also  
58 known as the Orange Book, or has an "NR" or "NA" rating or a similar rating by a nationally  
59 recognized reference; and that there are at least two therapeutically equivalent, multiple source  
60 drugs, or at least one generic drug available from one manufacturer, available for purchase by  
61 network pharmacies from national or regional wholesalers registered in Massachusetts.

62 (e) A pharmacy benefits manager or covered entity shall make available to each  
63 pharmacy with which the pharmacy benefits manager or covered entity has a contract and to  
64 each pharmacy included in a network of pharmacies served by a pharmacy services  
65 administrative organization with which the pharmacy benefits manager or covered entity has a  
66 contract, at the beginning of the term of a contract upon renewal of a contract, or upon request:

67 (1) The sources used to determine the maximum allowable costs for the drugs and  
68 medical products and devices on each maximum allowable cost list;

69 (2) Every maximum allowable cost for individual drugs used by that pharmacy benefits  
70 manager or covered entity for patients served by that contracted pharmacy; and

71 (3) Upon request, every maximum allowable cost list used by that pharmacy benefits  
72 manager or covered entity for patients served by that contracted pharmacy.

73 (f) A pharmacy benefits manager or covered entity shall:

74 (1) update each maximum allowable cost list at least every 3 business days

75 (2) Make the updated lists available to every pharmacy with which the pharmacy benefits  
76 manager or covered entity has a contract and to every pharmacy included in a network of  
77 pharmacies served by a pharmacy services administrative organization with which the pharmacy  
78 benefits manager or covered entity has a contract, in a readily accessible, secure and usable web-  
79 based format or other comparable format or process; and

80 (3) Utilize the updated maximum allowable costs to calculate the payments made to the  
81 contracted pharmacies within 2 business days.

82 (g) A pharmacy benefits manager or covered entity shall establish a clearly defined  
83 process through which a pharmacy may contest the cost for a particular drug or medical product  
84 or device.

85 (h) A pharmacy may base its appeal on one or more of the following:

86 (1) The ingredient cost established for a particular drug or medical product, or device is  
87 below the cost used by the Massachusetts Medicaid Program

88 (2) The pharmacy benefits manager or covered entity has placed a drug on the maximum  
89 allowable cost list that does not meet the requirements of subsection (d).

90 (i) The pharmacy must file its appeal within seven business days of its submission of the  
91 initial claim for reimbursement for the drug or medical product or device. A Pharmacy Services  
92 Administrative Organization (PSAO) may appeal on behalf of a pharmacy or group of  
93 pharmacies. The pharmacy benefits manager or covered entity must make a final determination

94 resolving the pharmacy's appeal within seven business days of the pharmacy benefits manager or  
95 covered entity's receipt of the appeal.

96 (j) If the final determination is a denial of the pharmacy's appeal, the pharmacy benefits  
97 manager or covered entity must state the reason for the denial and provide the national drug code  
98 of an equivalent drug that is generally available for purchase by pharmacies in this state from  
99 national or regional wholesalers licensed by the state at a price which is equal to or less than the  
100 cost for that drug.

101 (k) If a pharmacy's appeal is determined to be valid by the pharmacy benefits manager or  
102 covered entity, the pharmacy benefits manager or covered entity shall retroactively adjust the  
103 cost of the drug or medical product or device and reprocess all claims that were paid incorrectly.  
104 The adjustment shall be effective from the date the pharmacy's appeal was filed, and the  
105 pharmacy benefits manager or covered entity shall provide reimbursement for all reprocessed  
106 claims.

107 (l) Once a pharmacy's appeal is determined to be valid by the pharmacy benefits manager  
108 or covered entity, the pharmacy benefits manager or covered entity shall adjust the cost of the  
109 drug or medical product or device for all similar pharmacies in the network as determined by the  
110 pharmacy benefits manager within 3 business days.

111 (m) A pharmacy benefits manager or covered entity shall make available on its secure  
112 web site information about the appeals process, including, but not limited to, a telephone number  
113 or process that a pharmacy may use to submit cost appeals. The medical products and devices  
114 subject to the requirements of this part are limited to the medical products and devices included  
115 as a pharmacy benefit under the pharmacy benefits contract.

116 (n) A pharmacy shall not disclose to any third party the cost lists and any related  
117 information it receives from a pharmacy benefits manager or covered entity; provided, a  
118 pharmacy may share such lists and related information with a pharmacy services administrative  
119 organization or similar entity with which the pharmacy has a contract to provide administrative  
120 services for that pharmacy. If a pharmacy shares this information with a pharmacy services  
121 administrative organization or similar entity, that organization or entity shall not disclose the  
122 information to any third party.

123 (o) If a generic medication is readily available from a wholesaler licensed in  
124 Massachusetts, a pharmacy benefit manager is prohibited from requiring the brand name be used  
125 or giving any financial incentive to a pharmacy or patient to use the brand name product. The  
126 Massachusetts Medicaid program is exempt from this requirement.

127 (p) Pharmacy Benefit Managers shall provide annually a report to the Commissioner that  
128 details all denied pharmacy appeals for that year to include: the name of the pharmacy, date of  
129 service for the claim, the drug name and billing code used on the claim, the amount billed, the  
130 amount paid, and the reason for the denial.

131 Section 3: If during a pharmacy audit, the pharmacy can use signature logs or statements  
132 from the prescriber obtained after the audit to validate the intent of a prescription or medication  
133 order. If the pharmacy provided the intended medication to the patient but there was a clerical  
134 error (with no financial or clinical impact), the pharmacy benefit manager is prohibited from  
135 recouping the ingredient cost and can only recoup the dispensing fee. All revenue from  
136 pharmacy audits must be given to the plan sponsor.



137           Section 4: A pharmacy benefit manager is prohibited from charging a community  
138 pharmacy for credentialing.

139           Section 5: The Insurance Commissioner shall enforce this act and shall promulgate  
140 regulations to enforce the provisions of this act. The commissioner may examine or audit the  
141 books and records of a pharmacy benefits manager providing claims processing services or other  
142 prescription drug or device services for a health benefit plan to determine if the pharmacy  
143 benefits manager is in compliance with this act. The information or data acquired during an  
144 examination is:

145           (a) Considered proprietary and confidential; and

146           (b) Not subject to the Freedom of Information Act of Massachusetts