

HOUSE No. 3787

The Commonwealth of Massachusetts

PRESENTED BY:

Alyson M. Sullivan

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 pharmacy benefit managers reimbursements to pharmacies in the Commonwealth.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | DATE ADDED: |
|------------------------------|-----------------------|------------------|
| <i>Alyson M. Sullivan</i> | <i>7th Plymouth</i> | <i>2/4/2021</i> |
| <i>Michael J. Soter</i> | <i>8th Worcester</i> | <i>2/23/2021</i> |
| <i>David Allen Robertson</i> | <i>19th Middlesex</i> | <i>2/26/2021</i> |

HOUSE No. 3787

By Ms. Sullivan of Abington, a petition (accompanied by bill, House, No. 3787) of Alyson M. Sullivan, Michael J. Soter and David Allen Robertson relative to pharmacy benefit managers reimbursements to pharmacies in the Commonwealth. Health Care Financing.

The Commonwealth of Massachusetts

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

An Act relative to pharmacy benefit managers reimbursements to pharmacies in the Commonwealth.

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 176D of the General Laws is hereby amended by inserting after section 3B the
2 following section:-

3 Section 3C. (a) As used in this section, the following terms shall, unless the context
4 clearly requires otherwise, have the following meanings:

5
6 “Maximum allowable cost list” or “list”, a list of drugs used by a pharmacy benefits
7 manager in setting the maximum allowable cost upon which reimbursement to a pharmacy or
8 pharmacist may be based.

9 "Pharmaceutical wholesaler", a person or entity that sells and distributes prescription
10 pharmaceutical products, including without limitation a full line of brand-name, generic and
11 over-the-counter pharmaceuticals, and that offers regular and private delivery to a pharmacy.

12 “Pharmacist”, as defined in section 1 of chapter 94C.

13 “Pharmacist services”, products, goods or services provided as a part of the practice of
14 pharmacy.

15 “Pharmacy”, as defined in section 1 of chapter 94C.

16 "Pharmacy acquisition cost", the amount that a pharmaceutical wholesaler charges for a
17 pharmaceutical product as listed on the pharmacy's billing invoice.

18 “Pharmacy benefits manager”, as defined in section 226 of chapter 175.

19 "Pharmacy benefits manager affiliate", (i) a pharmacy or pharmacist that directly or
20 indirectly, through 1 or more intermediaries, owns or controls a pharmacy with a pharmacy
21 benefits manager; or (ii) a pharmacy that directly or indirectly, through 1 or more intermediaries,
22 is owned or controlled by or is under common ownership or control with a pharmacy benefits
23 manager.

24 “Pharmacy benefits plan or program”, a plan or program that pays for, reimburses, covers
25 the cost of or otherwise provides for pharmacist services to individuals who reside in or are
26 employed in the commonwealth.

27 (b) Before a pharmacy benefits manager places or continues to administer a particular
28 drug on a maximum allowable cost list, the drug shall: (i) be listed as therapeutically equivalent
29 and pharmaceutically equivalent “A” or "B" rated in the United States Food and Drug
30 Administration’s most recent version of the Orange Book or Green Book or have an NR or NA
31 rating by Medi-span, Elsevier Gold Standard Drug Database or a similar rating by a nationally

32 recognized reference; (ii) be available for purchase by each pharmacy in the commonwealth
33 from national or regional wholesalers operating in the commonwealth; and (iii) not be obsolete.

34 (c) (1) A pharmacy benefits manager shall: (i) provide access to its maximum allowable
35 cost list to each pharmacy subject to the list; (ii) update its maximum allowable cost list on a
36 timely basis, but in no event later than 7 calendar days after an increase of 10 per cent or more in
37 the pharmacy acquisition cost from 60 per cent or more of the pharmaceutical wholesalers doing
38 business in the commonwealth or a change in the methodology upon which the list is based or in
39 the value of a variable involved in the methodology; (iii) provide a process for each pharmacy
40 subject to the maximum allowable cost list to receive prompt notification of an update to the list;
41 and (iv) provide a reasonable administrative appeal procedure to allow pharmacies to challenge
42 maximum allowable costs and reimbursements made under a maximum allowable cost for a
43 specific drug or drugs as not meeting the requirements of this section or being below the
44 pharmacy acquisition cost.

45 (2) The reasonable administrative appeal procedure shall include a dedicated telephone
46 number and email address or website for the purpose of submitting administrative appeals.
47 Pharmacies shall be able to submit an administrative appeal directly to the pharmacy benefits
48 manager regarding the pharmacy benefits plan or program or through a pharmacy service
49 administrative organization. Pharmacies shall have no less than 7 business days to file an
50 administrative appeal.

51 (3) The pharmacy benefits manager shall respond to a challenge based on
52 reimbursements made under a maximum allowable cost within 7 business days after receipt of
53 the challenge.

54 (4) If a challenge is based on maximum allowable cost and the appeal is upheld, the
55 pharmacy benefits manager shall, within 7 business days after receipt of the challenge: (i) make
56 the change in the maximum allowable cost; (ii) permit the challenging pharmacy or pharmacist
57 to reverse and rebill the claim in question; (iii) provide the National Drug Code for the drug that
58 the increase or change is based upon to the pharmacy or pharmacist; and (iv) make the change in
59 the maximum allowable cost effective for each similarly situated pharmacy as defined by the
60 payor subject to the maximum allowable cost list.

61 (5) If a challenge is based on maximum allowable cost and the appeal is denied, the
62 pharmacy benefits manager shall, within 7 business days after receipt of the challenge, provide
63 the challenging pharmacy or pharmacist the National Drug Code for the drug and the name of the
64 national or regional pharmaceutical wholesalers operating in the commonwealth that have the
65 drug currently in stock at a price below the maximum allowable cost on the list.

66 (6) If the drug for which the National Drug Code provided by the pharmacy benefits
67 manager is not available at a price below the pharmacy acquisition cost from the pharmaceutical
68 wholesaler from which the pharmacy or pharmacist purchases the majority of prescription drugs
69 for resale, then the pharmacy benefits manager shall adjust the price on the maximum allowable
70 cost list to exceed the challenging pharmacy's pharmacy acquisition cost and permit the
71 pharmacy to reverse and rebill each claim affected by the inability to procure the drug at a cost
72 that is equal to or less than the previously challenged maximum allowable cost.

73 (d) A pharmacy benefits manager shall not reimburse a pharmacy or pharmacist in an
74 amount less than the amount that the pharmacy benefits manager reimburses a pharmacy benefits

75 manager affiliate for providing the same pharmacist services. The amount shall be calculated on
76 a per unit basis based on the same generic product identifier or generic code number.

77 (e) A pharmacy or pharmacist may decline to provide pharmacist services to a patient or
78 pharmacy benefits manager if, as a result of a maximum allowable cost list, a pharmacy or
79 pharmacist would be paid less than the pharmacy acquisition cost of the pharmacy providing
80 pharmacist services.

81 (f) This section shall apply to the pharmacy benefits manager employed by or under
82 contract with MassHealth or the group insurance commission if, at any time, MassHealth or the
83 group insurance commission engages the services of a pharmacy benefits manager to maintain a
84 maximum allowable cost list.

85 (g) A violation of this section shall be a deceptive and unfair trade practice as described
86 in section 2 of chapter 93A of the General Laws.