

SENATE No. 653

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 relative to prescription drug pricing.

PETITION OF:

NAME:

Bruce E. Tarr

DISTRICT/ADDRESS:

First Essex and Middlesex

SENATE No. 653

By Mr. Tarr, a petition (accompanied by bill, Senate, No. 653) of Bruce E. Tarr for legislation relative to prescription drug pricing. Financial Services.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

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 Section 1. Chapter 112 of the general laws is hereby amended by inserting after section
2 274 the following new section:-:

3 Section 275. Disclosure of prescription drug consumer cost burden; certification

4 As used in this Section:

5 (1) "Excess consumer cost burden" means a cost burden amount charged to an enrollee
6 for a covered prescription drug that is greater than the amount that an enrollee's health insurance
7 issuer pays, or would pay absent the enrollee cost sharing, after accounting for rebates, or where
8 an enrollee is subject to a coinsurance amount of less than one hundred percent, a prorated
9 amount of the issuer cost based on the enrollee's coinsurance amount.

10 (2) "Health benefit plan", "plan", "benefit", or "health insurance coverage" means
11 services consisting of medical care provided directly through insurance, reimbursement, or other
12 means, and including items and services paid for as medical care under any hospital or medical

13 service policy or certificate, hospital or medical service plan contract, preferred provider
14 organization, or health maintenance organization contract offered by a health insurance issuer.
15 However, excepted benefits are not included as a "health benefit plan".

16 (3) "Health insurance issuer" means any entity that offers health insurance coverage
17 through a plan, policy, or certificate of insurance subject to state law that regulates the business
18 of insurance. "Health insurance issuer" shall also include a health maintenance organization, as
19 defined and licensed pursuant chapter 175 or chapter 176A through 176W

20 (4) "Rebates" means: (a) Negotiated price concessions, including but not limited to base
21 rebates and reasonable estimates of any price protection rebates and performance-based rebates
22 that may accrue directly or indirectly to the health insurance issuer during the coverage year
23 from a manufacturer, dispensing pharmacy, or other party to the transaction.

24 (b) Reasonable estimates of any fees and other administrative costs that are passed
25 through to the health insurance issuer and serve to reduce the health insurance issuer's
26 prescription drug liabilities for the coverage year.

27 B. In the case of a health insurance issuer that offers or renews a health benefit plan for
28 sale in the state on or after January 1, 2019, if the health insurance issuer may charge enrollees
29 cost sharing amounts that may result in an excess consumer cost burden for covered prescription
30 drugs, the health insurance issuer shall disclose to enrollees and prospective enrollees the fact
31 that enrollees may be subject to an excess consumer cost burden. The notice shall be provided in
32 health benefit plan documents, including but not limited to inclusion in evidence of coverage
33 materials, formulary or preferred drug guides, and all marketing materials.

34 C. A health insurance issuer that offers or renews a health benefit plan for sale in the state
35 on or after January 1, 2019, shall annually certify to the commissioner of insurance that, during
36 the prior benefit year, the health insurance issuer made available to enrollees at the point of sale
37 at least an amount greater than fifty percent of rebates received by the insurer.

38 D. In complying with the provisions of this Section a health insurance issuer shall not
39 publish or otherwise reveal information regarding the actual amount of rebates the health
40 insurance issuer receives, including but not limited to information regarding the amount of
41 rebates it receives on a product, manufacturer, or pharmacy specific basis. Such information is a
42 trade secret, is not a public record as defined under chapter 66 of the general laws and shall not
43 be disclosed directly or indirectly. A health insurance issuer shall impose the confidentiality
44 protections of this Section on any third parties or vendors with which it contracts that may
45 receive or have access to rebate information.

46 E. The commissioner of insurance shall have enforcement authority over this Section.
47 Among other enforcement mechanisms, the commissioner of insurance may, after a hearing,
48 suspend or revoke a health insurance issuer's license for failure to comply with the requirements
49 of this Section, or providing a false certification under this Section.

50 F. Notwithstanding any provision of law to the contrary, the provisions of this Section
51 shall apply to any pharmacy benefit manager that has a contract with the executive office of
52 health and human services or is a subcontractor with a managed care organization that has a
53 contract with the executive office of health and human services for the provision of services in
54 the Medicaid program.