

HOUSE No. 537

The Commonwealth of Massachusetts

PRESENTED BY:

Paul R. Heroux

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 generic medications.

PETITION OF:

NAME:

DISTRICT/ADDRESS:

Paul R. Heroux

2nd Bristol

Carlos Gonzalez

10th Hampden

HOUSE No. 537

By Mr. Heroux of Attleboro, a petition (accompanied by bill, House, No. 537) of Paul R. Heroux and Carlos Gonzalez relative to access to generic medications and pharmacy reimbursements for the cost of drugs, medical products or devices. Financial Services.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 870 OF 2015-2016.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act to ensure access to generic medications.

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 176D is hereby amended by adding, after section 3B, the following
2 section:-

3 Section 3C. (a) For the purposes of this section the term "maximum allowable cost list"
4 shall mean a list of drugs, medical products or devices, or both medical products and devices, for
5 which a maximum allowable cost has been established by a pharmacy benefits manager or
6 covered entity. The term "maximum allowable cost" shall mean the maximum amount that a
7 pharmacy benefits manager or covered entity will reimburse a pharmacy for the cost of a drug or
8 a medical product or device.

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

16 (c) If a drug that has been placed on a maximum allowable cost list no longer meets the
17 requirements of subsection (a), the drug shall be removed from the maximum allowable cost list
18 by the pharmacy benefits manager or covered entity within 3 business days after the drug no
19 longer meets the requirements of subsection (a).

20 (d) A pharmacy benefits manager or covered entity shall make available to each
21 pharmacy with which the pharmacy benefits manager or covered entity has a contract and to
22 each pharmacy included in a network of pharmacies served by a pharmacy services
23 administrative organization with which the pharmacy benefits manager or covered entity has a
24 contract, at the beginning of the term of a contract and upon renewal of a contract:

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

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

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

31 (e) A pharmacy benefits manager or covered entity shall:

32 (1) Update each maximum allowable cost list at least every 3 business days;

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

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

40 (f) A pharmacy benefits manager or covered entity shall establish a clearly defined
41 process through which a pharmacy may contest the listed maximum allowable cost for a
42 particular drug or medical product or device.

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

44 (1) The maximum allowable cost established for a particular drug or medical product or
45 device is below the cost at which the drug or medical product or device is generally available for
46 purchase by pharmacies in this state from national or regional wholesalers; or

47 (2) The pharmacy benefits manager or covered entity has placed a drug on the list
48 without properly determining that the requirements of subsection (a).

49 (h) The pharmacy must file its appeal within seven business days of its submission of the
50 initial claim for reimbursement for the drug or medical product or device. The pharmacy benefits
51 manager or covered entity must make a final determination resolving the pharmacy's appeal

52 within seven business days of the pharmacy benefits manager or covered entity's receipt of the
53 appeal.

54 (i) If the final determination is a denial of the pharmacy's appeal, the pharmacy benefits
55 manager or covered entity must state the reason for the denial and provide the national drug code
56 of an equivalent drug that is generally available for purchase by pharmacies in this state from
57 national or regional wholesalers at a price which is equal to or less than the maximum allowable
58 cost for that drug.

59 (j) If a pharmacy's appeal is determined to be valid by the pharmacy benefits manager or
60 covered entity, the pharmacy benefits manager or covered entity shall adjust the maximum
61 allowable cost of the drug or medical product or device for the appealing pharmacy. The
62 adjustment for the appealing pharmacy shall be effective from the date the pharmacy's appeal
63 was filed, and the pharmacy benefits manager or covered entity shall provide reimbursement to
64 the appealing pharmacy and may require the appealing pharmacy to reverse and rebill the claim
65 in question in order to receive the corrected reimbursement.

66 (k) Once a pharmacy's appeal is determined to be valid by the pharmacy benefits manager
67 or covered entity, the pharmacy benefits manager or covered entity shall adjust the maximum
68 allowable cost of the drug or medical product or device to which the maximum allowable cost
69 applies for all similar pharmacies in the network as determined by the pharmacy benefits
70 manager within 3 business days.

71 (l) A pharmacy benefits manager or covered entity shall make available on its secure web
72 site information about the appeals process, including, but not limited to, a telephone number or
73 process that a pharmacy may use to submit maximum allowable cost appeals. The medical

74 products and devices subject to the requirements of this part are limited to the medical products
75 and devices included as a pharmacy benefit under the pharmacy benefits contract.

76 (m) A pharmacy shall not disclose to any third party the maximum allowable cost lists
77 and any related information it receives from a pharmacy benefits manager or covered entity;
78 provided, a pharmacy may share such lists and related information with a pharmacy services
79 administrative organization or similar entity with which the pharmacy has a contract to provide
80 administrative services for that pharmacy. If a pharmacy shares this information with a pharmacy
81 services administrative organization or similar entity, that organization or entity shall not
82 disclose the information to any third party.