

HOUSE No. 934

The Commonwealth of Massachusetts

PRESENTED BY:

Bruce J. Ayers

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 the pharmacy benefit manager compensation reform.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Bruce J. Ayers</i>	<i>1st Norfolk</i>	<i>1/18/2023</i>

HOUSE No. 934

By Representative Ayers of Quincy, a petition (accompanied by bill, House, No. 934) of Bruce J. Ayers relative to pharmacy benefit manager insurance compensation reform. Financial Services.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act to enact the pharmacy benefit manager compensation reform.

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: The General Laws are hereby amended by inserting after Chapter 175M
2 following new chapter:

3 CHAPTER 175N. Pharmacy Benefit Manager Compensation Reform Act of 2022

4 Section 1. Definitions

5 As used in this chapter, the following words shall, unless the context clearly requires
6 otherwise, have the following meanings:—

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

10 “Commissioner”, the commissioner of insurance.

11 “Division”, the division of insurance.

12 “Enrollee”, any individual entitled to coverage of health care services from a carrier.

13 “Health benefit plan”, a policy, contract, certificate or agreement entered into, offered or
14 issued by a carrier to provide, deliver, arrange for, pay for, or reimburse any of the costs of
15 health care services.

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

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

22 “Pharmacy benefit management service”:

23 (i) Negotiating the price of prescription drugs, including negotiating and contracting for
24 direct or indirect rebates, discounts, or other price concessions.

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

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

33 (vii) Such other services as the commissioner may define in regulation.

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

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

44 “Price protection rebate”, a negotiated price concession that accrues directly or indirectly
45 to the carrier or health benefit plan, or other party on behalf of the carrier or health benefit plan,
46 including a pharmacy benefit manager, in the event of an increase in the wholesale acquisition
47 cost of a drug above a specified threshold.

48 “Provider”, an individual or entity that provides, dispenses, or administers one or more
49 units of a prescription drug.

50 “Related entity”:

51 (i) any entity, whether foreign or domestic, that is a member of any controlled group of
52 corporations (as defined in section 1563(a) of the Internal Revenue Code, except that “50

53 percent” shall be substituted for “80 percent” wherever the latter percentage appears in such
54 code) of which a pharmacy benefit manager is a member; or

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

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

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

61 “Rebate”:

62 (i) Negotiated price concessions including but not limited to base price concessions
63 (whether described as a “rebate” or otherwise) and reasonable estimates of any price protection
64 rebates and performance-based price concessions that may accrue directly or indirectly to the
65 carrier or health benefit plan, or other party on behalf of the carrier or health benefit plan,
66 including a pharmacy benefit manager, during the coverage year from a manufacturer,
67 dispensing pharmacy, or other party in connection with the dispensing or administration of a
68 prescription drug, and

69 (ii) Reasonable estimates of any negotiated price concessions, fees and other
70 administrative costs that are passed through, or are reasonably anticipated to be passed through,
71 to the carrier or health benefit plan, or other party on behalf of the carrier or health benefit plan,
72 including a pharmacy benefit manager, and serve to reduce the carrier or health benefit plan’s
73 liabilities for a prescription drug.

74 “Spread pricing”, any amount charged or claimed by a pharmacy benefit manager in
75 excess of the ingredient cost for a dispensed prescription drug plus dispensing fee paid directly
76 or indirectly to any pharmacy, pharmacist, or other provider on behalf of the health benefit plan,
77 less a pharmacy benefit management fee.

78 “Unaffiliated pharmacy”, any dispensing pharmacy that is not fractionally or wholly
79 owned by, or a subsidiary or an affiliate of, a pharmacy benefit manager.

80 Section 2. Compensation and Prohibition on Spread Pricing

81 (a) No pharmacy benefit manager may derive income from pharmacy benefit
82 management services provided to a carrier or health benefit plan in this state except for income
83 derived from a pharmacy benefit management fee. The amount of any pharmacy benefit
84 management fees must be set forth in the agreement between the pharmacy benefit manager and
85 the carrier or health benefit plan.

86 (b) The pharmacy benefit management fee charged by or paid to a pharmacy benefit
87 manager from a carrier or health benefit plan shall not be directly or indirectly based or
88 contingent upon:

89 (1) the acquisition cost or any other price metric of a drug;

90 (2) the amount of savings, rebates, or other fees charged, realized, or collected by or
91 generated based on the activity of the pharmacy benefit manager; or

92 (3) the amount of premiums, deductibles, or other cost sharing or fees charged, realized,
93 or collected by the pharmacy benefit manager from patients or other persons on behalf of a
94 patient.

95 (c) Annually by December 31, each pharmacy benefit manager operating in the state must
96 certify to the commissioner that it has fully and completely complied with the requirements of
97 this section throughout the prior calendar year. Such certification must be signed by the chief
98 executive officer or chief financial officer of the pharmacy benefit manager.

99 (d) No pharmacy benefit manager, carrier, or health benefit plan may, either directly or
100 through an intermediary, agent, or affiliate engage in, facilitate, or enter into a contract with
101 another person involving spread pricing in this state.

102 (e) A pharmacy benefit manager contract with a carrier or health benefit plan entered
103 into, renewed, or amended on or after the effective date this act must:

104 (1) Specify all forms of revenue, including pharmacy benefit management fees, to be paid
105 by the carrier or health benefit plan to the pharmacy benefit manager; and

106 (2) Acknowledge that spread pricing is not permitted in accordance with this section.

107 Section 3. Audits of Pharmacy Benefit Managers

108 (a) The commissioner and any carrier or health benefit plan contracted with a pharmacy
109 benefit manager holding a license issued by the division may audit the pharmacy benefit
110 manager once per calendar year. This audit right is in addition to, and shall not be construed to
111 limit, any other audit rights authorized by law or contract. As part of any such audit, the
112 commissioner, carrier, or health benefit plan may request information including but not limited
113 to the following:

114 (1) All reimbursement paid to retail pharmacies, on a claim level, for all customers of the
115 pharmacy benefit manager in the state, including drug-specific reimbursement, dispensing fees,
116 all rebates, other fees, ancillary charges, clawbacks, or adjustments to reimbursement;

117 (2) Any difference in reimbursement paid to affiliated pharmacies and unaffiliated
118 pharmacies, including differences in reimbursed ingredient costs and dispensing fees;

119 (3) Historical claims data including ingredient cost, quantity, dispensing fee, sales tax,
120 usual & customary price, channel (mail/retail), carrier or health benefit plan paid amount, days'
121 supply, the amount paid by the covered individual, formulary tier, acquisition cost, and any
122 administrative fee associated with the claim, as applicable; and

123 (4) Aggregate rebate amounts received directly or indirectly from manufacturers
124 (including from any other entity affiliated with or related to the pharmacy benefit manager that
125 negotiates or contracts with manufacturers, such as group purchasing organizations and rebate
126 aggregators) by calendar quarter.

127 (b) The pharmacy benefit manager shall provide information referenced in subsection (a)
128 within thirty (30) days of its receipt of any request from the commissioner, carrier, or health
129 benefit plan.

130 (c) The commissioner may dictate the form in which the pharmacy benefit manager will
131 provide information in response to an audit under subsection (a).

132 (d) The pharmacy benefit manager must certify that all information submitted to the
133 commissioner, or any carrier or health benefit plan in accordance with this section is accurate

134 and complete in all material respects. Such certification must be signed by the chief executive
135 officer or chief financial officer of the pharmacy benefit manager.

136 (e) The commissioner and any carrier or health benefit plan contracted with a pharmacy
137 benefit manager holding a license issued by the division shall not directly or indirectly publish or
138 otherwise disclose any confidential, proprietary information, including but not limited to any
139 information that would reveal the identity of a specific health benefit plan or manufacturer, the
140 price(s) charged for a specific drug or class of drugs, the amount of any rebates provided for a
141 specific drug or class of drugs, or that would otherwise have the potential to compromise the
142 financial, competitive, or proprietary nature of the information. Such information shall be
143 considered to be a trade secret and confidential commercial information, shall not be considered
144 a public record, within the meaning of chapter sixty-six of the General Laws, and shall not be
145 disclosed directly or indirectly, or in a manner that would allow for the identification of an
146 individual product, therapeutic class of products, or manufacturer, or in a manner that would
147 have the potential to compromise the financial, competitive, or proprietary nature of the
148 information. The commissioner and any carrier or health benefit plan contracted with a pharmacy
149 benefit manager holding a license issued by the division shall impose the confidentiality
150 protections of this subsection on any vendor or downstream third party that may receive or have
151 access to this information.

152 Section 4. Savings Clause

153 (a) In implementing the requirements of this Act, the state shall only regulate a pharmacy
154 benefit manager, carrier, or health benefit plan to the extent permissible under applicable law.

155 (b) If any section, provision, or portion of this Act, including any condition or
156 prerequisite to any action or determination thereunder, is for any reason held to be illegal or
157 invalid, this illegality or invalidity shall not affect the remainder thereof or any other section,
158 provision, or portion of this Act, including any condition or prerequisite to any action or
159 determination thereunder, which shall be construed and enforced and applied as if such illegal or
160 invalid portion were not contained therein.

161 Section 5. Penalties

162 (a) If the commissioner determines that a pharmacy benefit manager is in violation of this
163 chapter or any rule or regulation promulgated under this chapter, the commissioner shall issue a
164 monetary penalty, suspend or revoke the pharmacy benefit manager's license or take other action
165 that the commissioner deems necessary.

166 (b) The commissioner shall issue rules and regulations to establish a process for
167 administrative appeal of any penalty, suspension or revocation imposed in accordance with this
168 section.

169 Section 6. Rules

170 The commissioner shall adopt any written policies, procedures or regulations the
171 commissioner determines necessary to implement this section.