

HOUSE No. 1596

By Mr. McCarthy of East Bridgewater, petition of Allen J. McCarthy relative to the liability of pharmacists. The Judiciary.

The Commonwealth of Massachusetts

In the Year Two Thousand and Seven.

AN ACT RELATIVE TO PHARMACISTS LIABILITY ACTIONS.

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 19A of the General Laws is hereby amended by adding at
2 the end thereof the following new section:—

3 Section 41. Equity in provision of prescription drug coverage in
4 general — A health plan, and a health insurance issuer offering
5 health insurance coverage, that provides for mail-order prescription
6 drug coverage (as defined in paragraph (3)(A)) shall also provide
7 non-mail-order prescription drug coverage consistent with
8 paragraph (2).

9 (2) Equitable coverage — A plan or coverage provides non-mail-
10 order prescription drug coverage consistent with this paragraph only
11 if—

12 (A) benefits under the non-mail-order prescription coverage are
13 provided for in the case of all drugs and all circumstances under
14 which benefits are provided under the mail-order prescription drug
15 coverage;

16 (B) no deductible or similar cost-sharing is imposed with respect
17 to benefits under the non-mail-order prescription drug coverage
18 unless such a deductible or similar cost-sharing is imposed with
19 respect to benefits under the mail-order prescription drug coverage;
20 and

21 (C) the benefits for the non-mail-order coverage assures payments
22 consistent with either (or both) of the following clauses:

23 1) The dollar amount of payment for prescription drug coverage
24 is not less than the dollar amount of benefits provided with respect
25 to the mail-order coverage for that same coverage.

26 2) The cost-sharing (including deductibles, copayments, or coin-
27 surance) imposed with respect to non-mail-order coverage is not
28 greater (as a percentage of charges or dollar amount, as specified
29 under the coverage) than the cost-sharing imposed with respect to
30 the mail-order coverage.

31 (3) Definitions — For purposes of this subsection:

32 (A) Mail-order prescription drug coverage — The term “mail-
33 order prescription drug coverage” means provision of benefits for
34 prescription drugs and biologicals that are delivered directly to
35 participants and beneficiaries through the mail or similar means.

36 (B) Non-mail-order prescription drug coverage — The term “non-
37 mail-order prescription drug coverage” means the provision of
38 benefits for prescription drugs and biologicals through one or more
39 local pharmacies.

40 (D) Health plan — The term “health plan” means an accident and
41 health insurance policy or certificate; a nonprofit hospital or medical
42 service corporation contract; a health maintenance organization sub-
43 scriber contract; a plan provided by a multiple employer welfare
44 arrangement; a Medicare+Choice plan; Medigap and Medicare
45 Select Policies; or a plan provided by another benefit arrangement,
46 to the extent permitted by the Employee Retirement Income Security
47 Act of 1974, as amended, or by any waiver of or other exception to
48 that Act provided under federal law or regulation. Without limita-
49 tion, “health plan” does not mean any of the following types of
50 insurance: Accident, Credit, Disability income, Specified disease,
51 Dental or vision, Coverage issued as a supplement to liability insur-
52 ance, Medical payments under automobile or homeowners,
53 Insurance under which benefits are payable with or without regard to
54 fault and is statutorily required to be contained in any liability policy
55 or equivalent self-insurance, and Hospital indemnity policy or
56 certificate.

57 (b) Prohibitions — A health plan as defined in paragraph (3)(D),
58 may not provide monetary payments or rebates to an individual to
59 encourage such individual to accept less than the minimum protec-
60 tions available under this section.