

SENATE NO. 411

AN ACT ESTABLISHING THE MASSACHUSETTS PRESCRIPTION DRUG FAIR PRICING PROGRAM

*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 118E of the General Laws is hereby amended by inserting after section 12

2 the following sections:

3 Section 12A. Consumer Protection Rules; Prior Authorization of Prescription

4 Drugs

5 (a) Any prior authorization process required by the division before it authorizes coverage for a
6 prescription drug shall comply with the consumer protections in this section and with 42 U.S.C.
7 section 1396r-8(d).

8 (b) Coverage for a prescription drug that is not covered by the division without prior
9 authorization shall be authorized if a patient's health care provider certifies, in a manner
10 determined by the division, that:

11 (i) the drug is medically necessary; and

12 (ii) in the case of a prescription drug that is not the preferred choice in a therapeutic
13 category on the preferred drug list,

14 (A) the preferred choice has not been effective, or with reasonable certainty is
15 not expected to be effective in treating the patient's condition; or

16 (B) the preferred choice causes or is reasonably expected to cause adverse or
17 harmful reactions in the patient.

18 (c) The prescriber's certification concerning whether a particular drug has been ineffective, is
19 expected to be ineffective in treating the patient, or is expected to cause an adverse or harmful
20 reaction shall be final.

21 (d)(1) The division's prior authorization process shall be designed to minimize administrative
22 burdens on prescribers, pharmacists, and consumers.

23 (2) The prior authorization process shall ensure real-time receipt of requests, by
24 telephone, voice mail, facsimile, electronic transmission, or mail on a 24-hour basis, seven days
25 a week.

26 (3) The prior authorization process shall provide an in-person response to emergency
27 requests by a prescriber with telephone answering queues that do not exceed 10 minutes.

28 (4) Any request for authorization or approval of a drug that the prescriber indicates,
29 including the clinical reasons for the request, is for an emergency or urgent condition shall be
30 responded to in no more than 4 hours from the time the program or participating health benefit
31 plan receives the request.

32 (5) In emergency circumstances, or if the response to a request for prior authorization is
33 not provided within the time period established in subdivision (4) of this subsection, a 72-hour
34 supply of the drug prescribed shall be deemed to be authorized by the program or the
35 participating health benefit plan, provided it is a prescription drug approved by the United States

36 Food and Drug Administration, and provided, for drugs dispensed to a Medicaid beneficiary, it
37 is subject to a rebate agreement with the Centers for Medicare and Medicaid Services.

38 (6) The division shall provide to participating providers a prior authorization request
39 form designed to permit the prescriber to make prior authorization requests in advance of the
40 need to fill the prescription, and designed to be completed without unnecessary delay. The form
41 shall be capable of being stamped with information relating to the participating provider and, if
42 feasible, at least one form capable of being copied shall contain known patient information.

43 (e) The division's prior authorization process shall require that the prescriber, not the pharmacy,
44 request a prior authorization exception to the requirements of this section. The division may
45 exempt a prescriber from the need to secure prior authorization for a specific drug category if
46 the division determines that the prescriber has written a minimum number of scripts in that
47 category, and the prescriber prescribes prescription drugs on the preferred drug list at or above
48 the minimum threshold for that category.

49 (f) If the patient is denied authorization of coverage, the denial shall be subject to an
50 administrative fair hearing and to all rights under section 14 of chapter 30A of the general laws.

51 (g) The division shall, using bulletins, manuals, notices or other appropriate means, educate
52 prescribers and pharmacists who treat MassHealth patients about the requirements of the prior
53 authorization process, including the obligations of providers and pharmacists and the rights of
54 consumers.

55 Section 12B. Supplemental Rebates

56 (a) The commissioner, separately or in concert with the authorized representatives of any health
57 benefit plan participating in the prescription drug fair pricing program established by chapter
58 118H, shall use the division's preferred drug list of prescription drugs covered without a prior

59 authorization requirement to negotiate with pharmaceutical companies for the payment to the
60 commissioner of supplemental rebates or price discounts for Medicaid. The commissioner may
61 also use the preferred drug list to negotiate for the payment of rebates or price discounts in
62 connection with drugs covered under any other health benefit plan within or outside this state
63 participating in the prescription drug fair pricing program established by chapter 118H. Such
64 negotiations and any subsequent agreement shall comply with the provisions of 42 U.S.C.
65 section 1396r-8. The program established by chapter 118H, or such portions of the program as
66 the commissioner shall designate, shall constitute a state pharmaceutical assistance program
67 under 42 U.S.C. section 1396r-8(c)(1)(C). The provisions of this section do not authorize
68 agreements with pharmaceutical manufacturers whereby financial support for medical services
69 covered by the Medicaid program is accepted as consideration for placement of one or more
70 prescription drugs on the preferred drug list or for excluding a drug from any prior authorization
71 requirement.

72 (b) The commissioner shall provide quarterly reports on the progress of negotiating
73 supplemental rebates pursuant to this section to the joint committee on health care and the house
74 and senate committees on ways and means. By September 1, 2003, the commissioner shall
75 provide with the next occurring quarterly report a cost-benefit analysis of alternative negotiation
76 strategies, including strategies used by the state Medicaid agencies in states of Florida and
77 Michigan to secure supplemental rebates and any other alternative negotiation strategy that
78 might secure lower net prescription drug costs.

79 (c) The commissioner shall prohibit the public disclosure of information revealing
80 company-identifiable trade secrets obtained by the department, and by any officer, employee or
81 contractor of the department in the course of negotiations conducted pursuant to this section.

82 Such confidential information shall be exempt from public disclosure.

83 Section 12C. Discount Program Waiver

84 (a) The division shall seek a prescription drug discount program waiver from the Centers for
85 Medicare and Medicaid Services pursuant to section 1115(a) of the Social Security Act. The
86 prescription drug discount program shall provide eligible individuals with a financial subsidy
87 for prescription drugs equal to the average rebate paid to the Medicaid program by
88 pharmaceutical manufacturers. Eligible individuals shall include Medicare-eligible individuals
89 whose financial eligibility exceeds 188 per cent of federal poverty level and who do not have an
90 insurance policy that covers drugs and other individuals whose financial eligibility does not
91 exceed 300 per cent of the federal poverty level who do not have an insurance program that
92 includes a prescription drug benefit.

93 (b) The division may establish, as part of the discount program, an annual enrollment fee.
94 Subject to appropriation, the division shall make a payment of at least 2 percent of the cost of
95 each prescription or refill dispensed to individuals enrolled in the program.

96 (c) In implementing the program, the division may contract with a nonprofit corporation or
97 other entity to administer the program. Such corporation or entity shall agree to assist
98 individuals enrolled in the program to access other free or discount prescription drug programs
99 offered by private entities, including pharmaceutical manufacturers.

100 (d) The division shall report to the house and senate committees on ways and means and the
101 joint committee on health care, not later than 60 days after the effective date of this section, on
102 the division's progress in implementing this section and shall report every 90 days thereafter on
103 its progress in obtaining the waiver to those committees.

104 SECTION 2. The General Laws are hereby amended by inserting the following new
105 chapter:

106 Chapter 118H. The Massachusetts Prescription Drug Fair Pricing Program

107 Section 1. Program Established

108 (a) There is hereby established a program to reduce the cost to the Commonwealth of providing
109 prescription drugs to its citizens while maintaining high quality in prescription drug therapies.

110 The program shall include, but shall not be limited to, the following components:

- 111 (1) the development and use of a statewide, uniform preferred list of covered
112 prescription drugs that identifies preferred choices within therapeutic classes for
113 particular diseases and conditions, including generic and therapeutic equivalents;
- 114 (2) the creation of a single purchasing unit for the purchase of prescription drugs by the
115 commonwealth;
- 116 (3) the use of strategies to negotiate with pharmaceutical manufacturers to lower the cost
117 of prescription drugs for program participants, including a supplemental rebate program;
- 118 (4) the development of educational programs, including a counterdetailing program,
119 designed to provide information and education on the therapeutic and cost-effective
120 utilization of prescription drugs to consumers, physicians, pharmacists and other health
121 care professionals authorized to prescribe and dispense prescription drugs;
- 122 (5) the utilization of any available cost containment tools that meet program objectives
123 by reducing the cost to the commonwealth of obtaining and providing prescription
124 drugs, including clinical management tools, utilization review procedures, a prior
125 authorization review process, duplicate prescription monitoring, and refill and supply
126 controls;

127 (6) the observance of consumer protection rules to maintain high quality in prescription
128 drug therapies and to protect access to needed prescriptions; and
129 (7) the operation of a discount program to provide the benefit of negotiated price
130 discounts to uninsured citizens.

131 (b) The following state agencies shall participate in the program authorized in this chapter, to
132 the extent permitted by federal law:

- 133 (1) the division of medical assistance;
- 134 (2) the executive office of elder affairs;
- 135 (3) the group insurance commission;
- 136 (4) the department of public health;
- 137 (5) the department of mental health;
- 138 (6) the department of mental retardation;
- 139 (7) the department of corrections; and
- 140 (8) the division of employment and training.

141 (c) Any other public or private health benefit plan that purchases prescription drugs may elect to
142 participate in all or portions of the program.

143 Section 2. Bulk Purchasing Agreements

144 (a) State agencies and other participants in the program shall act as a single purchasing unit for
145 the negotiation of a contract to purchase prescription drugs on behalf of the commonwealth.

146 (b) The prescription drug procurement unit created by section 62 of chapter 177 of the Acts of
147 2001 shall implement all or part of the program to the extent permitted by federal law. The
148 secretary of the executive office of elder affairs, the commissioner of the group insurance
149 commission and the commissioners of the departments of public health, mental health and

150 mental retardation may renegotiate or amend existing contracts for the purchase of prescription
151 drugs, including a contract made in conformance with said section 62, if such renegotiation or
152 amendment is necessary to implement all or part of the program and will be of economic benefit
153 to the health benefit plans subject to such contracts, and to the beneficiaries of such plans. Any
154 renegotiated or substituted contract shall be designed to improve the overall quality of
155 integrated health care services provided to beneficiaries of such plans.

156 Section 3. Pharmaceutical Benefits Manager

157 (a) State agencies and other participants in the program may contract with a third party
158 pharmacy benefit manager to assist in implementation of the program. Such pharmacy benefit
159 manager shall be a non-profit corporation with expertise in the management of pharmacy
160 benefits.

161 (b) No contract shall be signed with a pharmacy benefit manager unless the pharmacy benefit
162 manager has agreed to disclose to the commonwealth, in a manner that preserves the
163 confidentiality of any proprietary information:

- 164 (1) operating statements of the pharmacy benefit manager;
- 165 (2) total revenue attributable to pharmaceutical manufacturer rebates and total revenue
166 not attributable to pharmaceutical manufacturer rebates;
- 167 (3) all sources of rebate revenue and non-rebate revenue, and amounts of revenue from
168 such sources;
- 169 (4) rebate management fees collected;
- 170 (5) the terms and conditions of any contract with any subcontractor, including contracts
171 with the pharmacy benefit manager's pharmacy network; and
- 172 (6) the terms and conditions of any sale or exchange of prescription drug data

173 concerning beneficiaries or the prescribing practices of the providers.

174 (c) No contract shall be signed with a pharmacy benefit manager that has entered into an
175 agreement or engaged in one or more of the following practices unless a majority of state
176 agency participants in the program determines, after consideration of all relevant circumstances,
177 that such agreement or practice furthers the financial interests of the commonwealth, and does
178 not adversely affect the financial or medical interests of beneficiaries:

179 (1) any agreement with a pharmaceutical manufacturer to favor the manufacturer's
180 products over a competitor's products, or to switch the drug prescribed by the patient's health
181 care provider with a drug agreed to by the pharmacy benefit manager and the manufacturer;

182 (2) any agreement with a pharmaceutical manufacturer to share manufacturer rebates
183 and discounts with the pharmacy benefit manager, or to pay soft money, so-called, or other
184 economic benefits to the pharmacy benefit manager;

185 (3) any agreement to share revenue with a mail order or internet pharmacy company;

186 (4) any agreement or practice to bill the commonwealth's health benefit plans for
187 prescription drugs at a cost higher than the pharmacy benefit manager pays the pharmacy; or

188 (5) any agreement to sell prescription drug data concerning beneficiaries, or data
189 concerning the prescribing practices of health care providers.

190 Section 4. Cost Containment Tools

191 (a) The program shall include the following components:

192 (1) A preferred list of covered prescription drugs that identifies preferred choices within
193 therapeutic classes for particular diseases and conditions, including generic alternatives.

194 (i) The preferred drug list shall be implemented as a uniform, statewide,
195 preferred drug list for use by state agencies participating in the program and health
196 benefit plans in the Commonwealth shall be encouraged to participate in the program.

197 (ii) The program may utilize the MassHealth Drug List developed by the division
198 of medical assistance as its preferred drug list. In order to assist the state agencies
199 participating in the program with the development, modification and timely revision of
200 the preferred drug list, such agencies shall appoint a Drug List Review Board. The board
201 may be comprised in whole or in part of representatives of state agencies, including the
202 Drug Use Board established by the division of medical assistance pursuant to federal
203 law, or may be established by contract with a public or private non-profit organization.

204 The board shall:

205 (A) make recommendations for the adoption and maintenance of the
206 preferred drug list based upon considerations of clinical efficacy, safety,
207 and cost-effectiveness;

208 (B) meet at least quarterly;

209 (C) to the extent feasible, review all drug classes included in the
210 preferred drug list at least every 12 months, and recommend additions to
211 or deletions from the preferred drug list;.

212 (D) establish board procedures for the timely review of prescription
213 drugs newly approved by the federal Food and Drug Administration,
214 including procedures for the review of newly-approved prescription drugs
215 in emergency circumstances, including early refill review standards, a

216 prior authorization review process, duplicate prescription monitoring, and
217 quality and supply controls;

218 (E) encourage health benefit plans to implement the preferred drug list as
219 a uniform, statewide preferred drug list by inviting the representatives of
220 each health benefit plan providing prescription drug coverage to residents
221 of the commonwealth to participate as observers or nonvoting members
222 in the commissioners drug utilization review board, and by inviting such
223 plans to use the preferred drug list in connection with the plans'
224 prescription drug coverage.

225 (iii) Members of the board shall receive per diem compensation and
226 reimbursement of board related expenses. The board shall consult with a preferred drug
227 list advisory group which shall include 1 designee of the commissioner of mental health;
228 1 designee of the commissioner of public health; 1 designee of the secretary of the
229 executive office of elder affairs; 1 physician with experience treating MassHealth
230 patients; 1 practicing pediatrician with experience treating MassHealth patients; 1
231 practicing pharmacist with experience serving MassHealth patients; 1 pharmacologist
232 with expertise in psychiatric drugs; 1 representative of a senior citizens advocacy group;
233 1 representative of a disability advocacy group; and 1 representative of a statewide
234 advocacy group representing the interests of MassHealth members.

235 (2) A series of educational programs including a counterdetailing program, designed to
236 provide information and education on the therapeutic and cost-effective utilization of
237 prescription drugs to consumers, physicians, pharmacists and other health care professionals
238 authorized to prescribe and dispense prescription drugs.

239 (3) Consideration of alternative pricing mechanisms including consideration of using
240 maximum allowable cost pricing for generic and other prescription drugs.

241 (4) Consideration of alternative coverage terms, including consideration of providing
242 coverage of over-the-counter drugs where cost-effective in comparison to prescription drugs,
243 and authorizing coverage of dosages capable of permitting the consumer to split each pill if
244 cost-effective and medically appropriate for the consumer.

245 (5) Development of a simple, uniform prescription form, designed to implement the
246 preferred drug list, and to enable prescribers and consumers to request an exception to the
247 preferred drug list choice with a minimum of cost and time to prescribers, pharmacists and
248 consumers.

249 Section 5. Consumer Protection Rules

250 (a) The program shall authorize pharmacy benefit coverage when a patient's health care
251 provider prescribes a prescription drug not on the preferred drug list, if a patient's health care
252 provider certifies that:

253 (i) the drug is medically necessary; and

254 (ii) in the case of a prescription drug that is not the preferred choice in a therapeutic
255 category on the preferred drug list,

256 (A) the preferred choice has not been effective, or with reasonable certainty is
257 not expected to be effective in treating the patient's condition; or

258 (B) the preferred choice causes or is reasonably expected to cause adverse or
259 harmful reactions in the patient.

260 (b) The prescriber's certification concerning whether a particular drug has been ineffective, is
261 expected to be ineffective in treating the patient, or is expected to cause an adverse or harmful
262 reaction shall be final.

263 (c) The program shall authorize coverage notwithstanding any prior authorization requirement if
264 the patient agrees to pay any additional cost in excess of the benefits provided by the patient's
265 health benefit plan. The provisions of this paragraph shall not apply in circumstances in which
266 their application is inconsistent with federal Medicaid laws and regulations. The provisions of
267 this paragraph shall not affect implementation by a participating health benefit plan of tiered co-
268 payments or other similar cost sharing systems.

269 (d) The program or any participating health benefit plan shall provide information on how
270 prescribers, pharmacists, beneficiaries, and other interested parties can obtain a copy of the
271 preferred drug list, whether any change has been made to the preferred drug list since it was last
272 issued, and the process by which exceptions to the preferred list may be made.

273 (e)(1) The program's prior authorization process shall be designed to minimize administrative
274 burdens on prescribers, pharmacists, and consumers.

275 (2) The prior authorization process shall ensure real-time receipt of requests, by
276 telephone, voice mail, facsimile, electronic transmission, or mail on a 24-hour basis, seven days
277 a week.

278 (3) The prior authorization process shall provide an in-person response to emergency
279 requests by a prescriber with telephone answering queues that do not exceed 10 minutes.

280 (4) Any request for authorization or approval of a drug that the prescriber indicates,
281 including the clinical reasons for the request, is for an emergency or urgent condition shall be

282 responded to in no more than 4 hours from the time the program or participating health benefit
283 plan receives the request.

284 (5) In emergency circumstances, or if the response to a request for prior authorization is
285 not provided within the time period established in subdivision (4) of this subsection, a 72-hour
286 supply of the drug prescribed shall be deemed to be authorized by the program or the
287 participating health benefit plan, provided it is a prescription drug approved by the United States
288 Food and Drug Administration, and provided, for drugs dispensed to a Medicaid beneficiary, it
289 is subject to a rebate agreement with the Centers for Medicare and Medicaid Services.

290 (6) The program or participating plan shall provide to participating providers a prior
291 authorization request form designed to permit the prescriber to make prior authorization
292 requests in advance of the need to fill the prescription, and designed to be completed without
293 unnecessary delay. The form shall be capable of being stamped with information relating to the
294 participating provider and, if feasible, at least one form capable of being copied shall contain
295 known patient information.

296 (f) The program's prior authorization process shall require that the prescriber, not the pharmacy,
297 request a prior authorization exception to the requirements of this section. The program may
298 exempt a prescriber from the need to secure prior authorization for a specific drug category if
299 the program determines that the prescriber has written a minimum number of scripts in that
300 category, and the prescriber prescribes prescription drugs on the preferred drug list at or above
301 the minimum threshold for that category.

302 (g) If the patient is denied authorization of coverage, the denial shall be subject to an
303 administrative fair hearing and to all rights under section 14 of chapter 30A of the general laws.

304 Section 6. Discount Card Program.

305 (a) The commissioner of health and human services or another commissioner of a participating
306 state agency designated by program participants shall implement a pharmacy discount plan, to
307 be known as the Healthy Massachusetts Discount Card Plan, for residents without adequate
308 coverage for prescription drugs. As used in this section, a resident without adequate coverage
309 means a resident of the commonwealth with no insurance coverage for prescription drugs or
310 with coverage for which the annual maximum coverage limit under his health benefit plan has
311 been reached. Such plan shall establish a system through which residents without adequate
312 coverage are able to take advantage of discounted prices for prescription drugs negotiated
313 pursuant to this chapter. Such commissioner shall implement the pharmacy discount program
314 authorized by this section without any financial contribution by the state, and may establish an
315 enrollment fee in such amount as is necessary to support the administrative costs of the plan.
316 The plan shall be designed to work cooperatively with other state prescription drug assistance
317 programs, including any program created pursuant to a discount program waiver granted by the
318 Centers for Medicare and Medicaid Services to the division of medical assistance. Such
319 commissioner may contract with a nonprofit corporation or other entity to administer the
320 program. Such corporation or entity shall agree to assist individuals eligible for the program to
321 access other free or discount prescription drug programs offered by private entities, including
322 pharmaceutical manufacturers.

323 Section 7. Reporting and Legislative Oversight

324 (a) The commissioner of health and human services or another commissioner of a participating
325 state agency designated by program participants shall report quarterly to the joint committee on
326 health care and the house and senate committees on ways and means on progress of the program

327 in implementing a single state purchasing unit for prescription drugs pursuant to section 2. The
328 report shall provide a status report on the formation of or operation of the contract negotiated
329 pursuant to section 2, and shall identify any barriers to full implementation of section 2 and
330 recommend any changes to the program or other legislative changes advisable to eliminate such
331 barriers. The report shall also report on the program's progress in securing the participation of
332 other health benefit plans with the commonwealth by means of joint purchasing agreements to
333 enhance the commonwealth's purchasing power.

334 (b) Each year for the duration of the pharmacy benefit manager contract pursuant to section 3,
335 the commissioner of health and human services or another commissioner of a participating state
336 agency designated by program participants shall provide a status report on the contract and the
337 operations of the pharmacy benefit manager to the joint committee on health care and the house
338 and senate committees on ways and means. The report shall include:

- 339 (1) a description of the activities of the pharmacy benefit manager;
- 340 (2) an analysis of the success of the pharmacy benefit manager in achieving each of the
341 department's public policy goals, together with the pharmacy benefit manager's report of its
342 activities and achievements;
- 343 (3) an assessment, based upon information learned in contracting with the pharmacy
344 benefits manager, of administrative costs relating to prescription drug benefits in the Medicaid
345 program and the Prescription Advantage program established pursuant to section 39 of chapter
346 19A, including any recommendations for increasing the administrative efficiency of such
347 programs;

348 (4) any recommendations for enhancing the benefits of or minimizing inefficiencies of
349 the pharmacy benefit manager contract or advancing the commonwealth's public policy goals
350 relating to pharmaceutical costs, quality and access;

351 (5) a fiscal report on the costs and savings to the commonwealth of the pharmacy benefit
352 manager contract, including the information disclosed pursuant to paragraph (b) of section 3, in
353 a manner that preserves the confidentiality of any proprietary information; and

354 (6) if the pharmacy benefit manager engages in any of the activities described in
355 paragraph (c) of section 3, an explanation of the reasons for finding that such agreement or
356 practice furthers the financial interests of the commonwealth, and does not adversely affect the
357 financial or medical interests of beneficiaries.

358 (c) The commissioner of health and human services or another commissioner of a participating
359 state agency designated by program participants shall report quarterly to the joint committee on
360 health care and the house and senate committees on ways and means concerning the cost
361 containment aspects of the program undertaken pursuant to section 4. Such report shall include:

362 (1) a copy of the preferred drug list, an explanation of the list, a summary of the
363 operation of the prior authorization process or any other cost savings measures instituted as a
364 part of the list, and an estimate of expected cost savings as a result of the preferred drug list;

365 (2) a description of the efforts undertaken to educate consumers and health care
366 providers about the preferred drug list and the program's utilization review procedures;

367 (3) a description of the efforts undertaken to establish programs to educate health care
368 providers about the costs of prescribing patterns, including counterdetailing programs;

369 (4) a report of other cost containment strategies undertaken, including, but not limited to,
370 alternative pricing mechanisms and alternative coverage terms, the expected savings from such
371 strategies, and the effect of such strategies on access to prescription drugs for consumers; and

372 (5) a status report on the development of a uniform prescription form and any barriers to
373 such development.

374 (d) The joint committee on health care shall closely monitor implementation of the program,
375 including the preferred drug list and utilization review procedures, to ensure that the consumer
376 protection standards are not diminished as a result of implementing the preferred drug list and
377 the utilization review procedures, including any unnecessary delay in access to appropriate
378 medications. Such joint committee shall, by means of an oversight hearing or otherwise, ensure
379 that all affected interests, including consumers, health care providers, pharmacists and others
380 with pharmaceutical expertise have an opportunity to comment on the operation of the program,
381 the preferred drug list, and other procedural aspects of the program.

382

383 SECTION 3. The General Laws are hereby amended by adding after chapter 268B the
384 following chapter.

385 Chapter 268C. Physician and Pharmaceutical Manufacturer Conduct

386 Section 1. As used in this chapter, the following words shall have the following meanings:-

387 "Gift", a payment, entertainment, subscription, advance, services or anything of value,
388 unless consideration of equal or greater value is received. "Gift" shall not include a
389 commercially reasonable loan made in the ordinary course of business, anything of value
390 received by inheritance, a gift received from a member of the reporting person's immediate
391 family or from a relative within the third degree of consanguinity of the reporting person or of

392 the reporting person's spouse or from the spouse of any such relative, or prescription drugs
393 provided to a physician solely and exclusively for use by the physician's patients.

394 "Immediate family", a spouse and any dependent children residing in the reporting
395 person's household.

396 "Medical device", an instrument, apparatus, implement, machine, contrivance, implant,
397 in vitro reagent, or other similar or related article, including any component, part, or accessory,
398 which is:

399 (1) recognized in the official National Formulary, or the United States Pharmacopeia, or
400 any supplement to them,

401 (2) intended for use in the diagnosis of disease or other conditions, or in the cure,
402 mitigation, treatment, or prevention of disease, in man or other animals, or

403 (3) intended to affect the structure or any function of the body of man or other animals,
404 and which does not achieve its primary intended purposes through chemical action within or on
405 the body of man or other animals and which is not dependent upon being metabolized for the
406 achievement of its primary intended purposes.

407 "Person", a business, individual, corporation, union, association, firm, partnership,
408 committee, or other organization or group of persons.

409 "Pharmaceutical marketer", a person who, while employed by or under contract to
410 represent a pharmaceutical manufacturing company, engages in pharmaceutical detailing,
411 promotional activities, or other marketing of prescription drugs in this state to any physician,
412 hospital, nursing home, pharmacist, health benefit plan administrator, or any other person
413 authorized to prescribe, dispense, or purchase prescription drugs. The term does not include a
414 wholesale drug distributor licensed under section 36A, a representative of such a distributor

415 who promotes or otherwise markets the services of the wholesale drug distributor in connection
416 with a prescription drug, or a retail pharmacist registered under section 37 if such person is not
417 engaging in such practices under contract with a manufacturing company.

418 “Pharmaceutical manufacturing company”, any entity which is engaged in the
419 production, preparation, propagation, compounding, conversion, or processing of prescription
420 drugs, either directly or indirectly by extraction from substances of natural origin, or
421 independently by means of chemical synthesis, or by a combination of extraction and chemical
422 synthesis, or any entity engaged in the packaging, repackaging, labeling, relabeling, or
423 distribution of prescription drugs. The term does not include a wholesale drug distributor
424 licensed under section 36A or a retail pharmacist registered under section 37.

425 “Pharmaceutical manufacturer agent”, a pharmaceutical marketer or any other person
426 who for compensation or reward does any act to promote, oppose or influence the prescribing of
427 a particular prescription drug or medical device or category of prescription drugs or medical
428 devices. The term shall not include a licensed pharmacist, licensed physician or any other
429 licensed health care professional with authority to prescribe prescription drugs who is acting
430 within the ordinary scope of the practice for which he is licensed.

431 “Physician”, a person licensed to practice medicine by the board of medicine pursuant to
432 section 2 of chapter 112 .

433 “Prescription drugs”, any and all drugs upon which the manufacturer or distributor has
434 placed or must, in compliance with federal law and regulations, place the following or a
435 comparable warning: “Caution federal law prohibits dispensing without prescription.”

436 Section 2. No pharmaceutical manufacturer agent shall knowingly and willfully offer or give to
437 a physician or a member of a physician’s immediate family, and no physician shall knowingly

438 and willfully solicit or accept from any pharmaceutical manufacturer, gifts of any value at any
439 time.

440 Section 3. A person who violates this section shall be punished by a fine of not more than
441 \$5,000 or by imprisonment for not more than 2 years, or both.

442

443 SECTION 4. The commissioner of the division of medical assistance, the secretary of
444 the executive office of elder affairs, the commissioner of the group insurance commission and
445 the commissioners of state agencies participating in the Massachusetts prescription drug fair
446 pricing program established by chapter 118H of the general laws shall take all steps necessary to
447 enable the commonwealth to participate in joint prescription drug purchasing agreements with
448 other states and other health benefit plans. Such steps shall include:

449 (1) Active collaboration with the National Legislative Association on Prescription Drug Prices
450 in the Association's efforts;

451 (2) Active collaboration with the Pharmacy RFP Issuing States Initiative, so-called, organized
452 by the West Virginia Public Employees Insurance Agency; and

453 (3) The execution of any joint purchasing agreements or other contracts with any health benefit
454 plan or organization within or outside the state which such commissioners determines will lower
455 the cost of prescription drugs for the commonwealth and its citizens while maintaining high
456 quality in prescription drug therapies.

457 SECTION 5. (a) The General Court finds that the National Legislative Association on
458 Prescription Drug Prices is a nonprofit organization of legislators formed for the purpose of
459 making prescription drugs more affordable and accessible to citizens of the member states,

460 including the commonwealth. The General Court further finds that the activities of the
461 Association provide a public benefit to the people of the commonwealth.

462 (b) Three members of the senate, including one member of the minority party, shall be
463 appointed directors of the Association by the senate president, and three members of the house
464 of representatives, including one member of the minority party, shall be appointed directors of
465 the Association by the speaker of the house. Directors so appointed shall serve until new
466 members are appointed.

467 (c) The directors of the Association shall report to the house and senate committees on ways and
468 means and the joint committees on health care and insurance on or before January 1 of each
469 year with a summary of the activities of the Association, and any findings and recommendations
470 for making prescription drugs more affordable and accessible to citizens of the commonwealth.