

By Mr. Fitzgerald of Boston, petition of Kevin W. Fitzgerald, other members of the General Court and another for legislation to establish a pharmaceutical benefit program for elders and disabled persons. Human Services and Elderly Affairs.

**The Commonwealth of Massachusetts**

In the Year One Thousand Nine Hundred and Eighty-Seven.

AN ACT TO ESTABLISH A PHARMACEUTICAL BENEFIT PROGRAM FOR  
ELDERS AND THE DISABLED.

*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. Finding that many of the Commonwealth's  
2 elderly and disabled citizens are experiencing difficulties in  
3 meeting the rising costs of medically necessary prescription drugs,  
4 the legislature, in its responsibilities to provide for the health,  
5 welfare and safety of its residents, hereby establishes a limited state  
6 pharmaceutical benefit program for elders and the disabled.

1 SECTION 2. Definitions.

2 The following words and phrases when used in this act shall  
3 have the meanings given to them in this section unless the context  
4 clearly indicates otherwise: —

5 "Board". The Pharmaceutical Benefit Review Board

6 "Department". The Executive Office of Elder Affairs

7 "Eligible claimant". A resident of the Commonwealth 60 years  
8 of age and over, or disabled, as defined below, whose annual  
9 income is less than the maximum annual eligibility income, and  
10 who is not otherwise qualified for public assistance or  
11 pharmaceutical benefits under MGL ch.118

12 "Income." All income from whatever source derived, including  
13 but not limited to salaries, wages, bonuses, commissions, income  
14 from self-employment, alimony, support money, cash public  
15 assistance, and general relief, the gross amount of any pensions  
16 or annuities including railroad retirement benefits, all benefits

17 received under state unemployment insurance laws and veteran's  
18 disability payments, all benefits received under the Federal Social  
19 Security Act (except Medicare benefits), all interest received from  
20 the Federal government or any state government, or any  
21 instrumentality or political subdivision thereof, realized capital  
22 gains, rentals, workmen's compensation and the gross amount of  
23 loss of time insurance benefits, life insurance benefits and  
24 proceeds, except the first \$5,000 of the total of death benefits  
25 payments, and gifts of cash or property, other than transfers by  
26 gift between members of a household, in excess of a total value  
27 of \$300, but shall not include surplus food or other relief in kind  
28 supplied by a government agency or property tax rebate.

29 "Maximum annual income". Annual income as determined by  
30 the department. Such amount shall not exceed \$10,000 in the case  
31 of single persons or \$15,000 in the case of the combined annual  
32 income of married persons.

33 "Pharmacy". A pharmacy licensed by the Commonwealth.

34 "Prescription". All legend or non-legend drugs that are  
35 prescribed, insulin, insulin syringes and insulin needles.  
36 Experimental and ineffective drugs are prohibited.

37 "Private contractor". A person, partnership or corporate entity  
38 who designs and submits a proposal to provide pharmaceutical  
39 benefits as established under the provisions of this act.

40 "Contract drug". The pharmaceutical benefit contracts for the  
41 elderly and disabled as established by this act.

### 1 SECTION 3. Responsibilities of the Executive Office of Elder 2 Affairs.

3 (a) Determination of eligibility. — The department shall adopt  
4 regulations relating to the determination of eligibility of  
5 prospective claimants, pharmacists and dispensing physicians,  
6 and the determination and elimination of program abuse. The  
7 department shall have the power to declare ineligible any claimant  
8 who abuses or misuses the established prescription plan. The  
9 department shall have the power to investigate cases of suspected  
10 provided or claimant fraud. The department shall delegate  
11 responsibility for disabled eligibility determinations to the  
12 appropriate department or office.

13 (b) Reduced benefit assistance. — Any eligible claimant whose  
14 prescription drug costs are covered in part by any other plan of

15 assistance or insurance may be required to receive reduced benefits  
16 under the provisions of this act at the discretion of the department.

17 (c) Rebates for expenses prohibited. — A system of rebates or  
18 reimbursements to the participant for pharmaceutical expenses  
19 shall be prohibited.

20 (d) Requests for proposals. — The department shall prepare  
21 a request for proposal for the purpose of providing pharmaceu-  
22 tical benefits for the elderly and disabled within this Common-  
23 wealth. The request for proposal shall require private contractors  
24 to submit a three-year proposal not to exceed \$100,000,000. Funds  
25 not expended in the fiscal year in which they were appropriated  
26 shall not lapse and shall be available for use in the next fiscal year.

27 (e) Program criteria. — The program shall include the  
28 following criteria: —

29 (1) Participating pharmacies are to be paid within 15 days of  
30 the contracting firm receiving the appropriate substantiation of  
31 the transaction. Pharmacies shall be entitled to interest for  
32 payment not made within the 15 day period at a rate approved  
33 by the Pharmaceutical Benefit Review Board.

34 (2) Collection of the co-payment, if any, by pharmacies shall  
35 be mandatory.

36 (3) Claimants participating in the program are not required to  
37 maintain records of each transaction.

38 (4) The system established shall include a participant co-  
39 payment schedule of four dollars for each prescription for the first  
40 year of the contract. The department may recommend to the  
41 legislature an increase or decrease in the level of co-payment based  
42 upon the financial experience and projections of the program and  
43 after consultation with the Pharmaceutical Benefit Review Board.

44 (5) The program shall consist of payments to pharmacies on  
45 behalf of eligible claimants for the average wholesale cost of  
46 legend or non-legend prescribed drugs, insulin, insulin syringes  
47 and insulin needles which exceed the co-payment and a dispensing  
48 fee of at least two dollars and fifty cents. In no case shall the  
49 Commonwealth be charged more than the price of the drug at  
50 the particular pharmacy on the date of the sale. For the purpose  
51 of this act, the eligible claimant shall be liable to pay the cost  
52 difference between the brand name drug and the generically  
53 equivalent drug as approved under the provisions of the act of



54 October 1, 1976, ch.470, referred to as the Law of Interchangeable  
55 Drugs. Only the physician may prescribe a non-generic  
56 medication.

57 (6) Prescription benefits for any single prescription shall be  
58 limited to a 60-day supply of the prescription drug or 200 doses,  
59 whichever is less, except that in the case of acute drugs the  
60 limitation shall be a 15-day supply.

61 (7) Experimental and ineffective drugs are to be excluded from  
62 the program under policies to be adopted by the Board.

63 (8) The program must be implemented within 90 days of the  
64 effective date of the contract.

65 (f) Reports by the Department. — The department shall  
66 maintain monthly statistical records of the program to effectively  
67 determine the cost, level of participation and any patterns of drug  
68 usage. The department shall submit a report every three months  
69 to the Pharmaceutical Benefit Review Board. The quarterly report  
70 shall contain, but is not limited to, all information relating to the  
71 number of persons served by the program, their places of  
72 residence, the numbers of kinds of pharmaceuticals used, the cost  
73 of prescriptions and an estimate of actual expenses incurred by  
74 pharmacists participating in the program, and drug utilization  
75 patterns indicative of potential abuse or misuse.

76 (g) Adjustments to program. — The department is authorized  
77 to enter into discussions with the private contractor(s) pursuant  
78 to section 5(c) of this act.

#### 1 SECTION 4. Contract.

2 The department is authorized to enter into a contract or  
3 contracts providing for prescription drugs to eligible persons  
4 pursuant to this act. The department shall select a proposal or  
5 proposals that include, but is not limited to, the criteria set forth  
6 in section 3 of this act.

#### 1 SECTION 5. Pharmaceutical Benefit Review Board.

2 (a) Establishment. — A Pharmaceutical Benefit Review Board  
3 shall be established to ensure that the program is providing and  
4 continues to provide the benefits intended in a fiscally responsible  
5 manner.

6 (b) Composition. — The Board shall be composed of the  
7 following seven persons: —

8 (1) The Secretary of the Executive Office of Elder Affairs, who  
9 shall serve as its chairperson, (2) the Commissioner of Public  
10 Health, (3) five public members appointed by the Governor. Those  
11 appointed shall include two elders, one disabled person, one  
12 pharmacist and one physician.

13 (c) Review. — Using the quarterly reports submitted by the  
14 department pursuant to section 3(f) of this act and other  
15 appropriate data sources, the board shall conduct a quarterly  
16 review of the program. The board may recommend changes in  
17 the structure of the program and direct the department to enter  
18 into discussions with the private contractor concerning  
19 amendments to the contract.

#### 1 SECTION 6. Penalties.

2 (a) Criminal penalties. — Any person who submits a false or  
3 fraudulent claim under this act, or who aids or abets another in  
4 the submission of a false or fraudulent claim, or who is eligible  
5 under a private, state or federal program for prescription  
6 assistance and who claims or receives duplicate benefits hereunder  
7 or who otherwise violates any provision of this act, commits a  
8 misdemeanor.

9 (b) Suspension of license. — Any provider who has been found  
10 guilty under this act shall be subjected to a suspension of his or  
11 her license to practice for a period of one year.

12 (c) Repayment of gain. — Any provider or claimant who is  
13 found guilty under this act is subject to repay three times the value  
14 of the material gain he or she received.

#### 1 SECTION 7. Implementation of this Act.

2 Implementation of the provisions of this act shall be in  
3 accordance with the following: —

4 (1) The department shall publish its request for proposal within  
5 60 days of the effective date of this act.

6 (2) The deadline for submitting bids on the proposal shall be  
7 60 days from the date of publication of the department's request  
8 for proposal.





