SENATE DOCKET, NO. 1750 FILED ON: 1/18/2013

SENATE . . . . . No. 507

The Commonwealth of Massachusetts

PRESENTED BY:

Katherine M. Clark

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 passage of the accompanying:

An Act strengthening market impact review.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Katherine M. Clark	*Fifth Middlesex*
Barry R. Finegold	*Second Essex and Middlesex*

SENATE DOCKET, NO. 1750 FILED ON: 1/18/2013

SENATE . . . . . No. 507

By Ms. Clark, a petition (accompanied by bill, Senate, No. 507) of Katherine M. Clark and Barry R. Finegold for legislation to strengthen market impact review. Health Care Financing.

The Commonwealth of Massachusetts

An Act strengthening market impact review.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Section 13 of Chapter 6D is hereby amended by striking subsections (e) through (k) and replacing them with the following new language:-

(e) The commission shall make factual findings and issue a preliminary report on the cost and market impact review. If the commission finds in its review that the provider organization's request has resulted or would result in any unfair method of competition, any unfair or deceptive act or practice, or determines that the proposed change will have an adverse cost, market or solvency impact, unreasonably restrain trade, substantially lessen competition, or otherwise violate antitrust laws, the commission may deny the provider's request, or impose restrictions on the provider's request to minimize any unfair method of competition, any unfair or deceptive act or practice, or determines that the proposed change will have an adverse cost, market or solvency impact, unreasonably restrain trade, substantially lessen competition, or otherwise violate antitrust laws. At any time during its review, the commission may refer its findings, together with any supporting documents, data or information to the attorney general for further review and action.

In the report, the commission shall identify any provider or provider organization that meets the following criteria: (i) the provider or provider organization has a dominant market share for the services it provides; and (ii) the provider or provider organization charges prices for services that are materially higher than the median prices charged by all other providers for the same services in the same market; or the provider or provider organization has a health status adjusted total medical expense that is materially higher than the median total medical expense for all other providers for the same service in the same market. Within 30 days after issuance of a preliminary report, the provider or provider organization may respond in writing to the findings in the report. The commission shall then issue its final report. The commission shall refer to the attorney general its report on any provider organization that meets all 3 criteria under subsection (e).

26 (f) Any provider organization aggrieved by any such decision by the commission to deny
27 a request for a material change may request an adjudicatory hearing pursuant to chapter thirty A
28 within twenty-one days of the commission's decision. The commission shall notify the attorney
29 general and the division of insurance upon receipt of such hearing request. Said hearing shall be
30 conducted within thirty days of the commission's receipt of the hearing request. The attorney
31 general may intervene in a hearing under this subsection and may require the production of
32 additional information or testimony. The commission shall issue a written decision within thirty
33 days of the conclusion of the hearing.

34 (g) A provider organization aggrieved by said written decision may, within twenty days
35 of said decision, file a petition for review in the supreme judicial court for Suffolk County.
36 Review by the supreme judicial court on the merits shall be limited to the record of the
37 proceedings before the commissioner and shall be based upon the standards set forth in
38 paragraph (7) of section fourteen of chapter thirty A.

39 (h) When the commission, under subsection (f), refers a report on a provider or provider
40 organization to the attorney general, the attorney general may: (i) conduct an investigation to
41 determine whether the provider or provider organization engaged in unfair methods of
42 competition or anti-competitive behavior in violation of chapter 93A or any other law; (ii) report
43 to the commission in writing the findings of the investigation and a conclusion as to whether the
44 provider or provider organization engaged in unfair methods of competition or anti-competitive
45 behavior in violation of chapter 93A or any other law; and (iii) if appropriate, take action under
46 chapter 93A or any other law to protect consumers in the health care market. The commission's
47 final report may be evidence in any such action.

48 (i) Nothing in this section shall limit the authority of the attorney general to protect
49 consumers in the health care market under any other law.

50 (j) The commission shall adopt regulations for conducting cost and market impact
51 reviews and for administering this section. These regulations shall include definitions of material
52 change and non-material change, primary service areas, dispersed service areas, dominant market
53 share, materially higher prices and materially higher health status adjusted total medical
54 expenses, and any other terms as necessary. All regulations promulgated by the commission shall
55 comply with chapter 30A.

56 (k) Nothing in this section shall limit the application of other laws or regulations that may
57 be applicable to a provider or provider organization, including laws and regulations governing
58 insurance.