

HOUSE No. 1228

The Commonwealth of Massachusetts

PRESENTED BY:

José F. Tosado

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 promote transparency and cost control of pharmaceutical drug prices.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: |
|---------------------------|---|
| <i>José F. Tosado</i> | <i>9th Hampden</i> |
| <i>Mathew Muratore</i> | <i>1st Plymouth</i> |
| <i>Diana DiZoglio</i> | <i>14th Essex</i> |
| <i>Jason M. Lewis</i> | <i>Fifth Middlesex</i> |
| <i>Steven Ultrino</i> | <i>33rd Middlesex</i> |
| <i>Marjorie C. Decker</i> | <i>25th Middlesex</i> |
| <i>Carmine L. Gentile</i> | <i>13th Middlesex</i> |
| <i>James M. Cantwell</i> | <i>4th Plymouth</i> |
| <i>Ruth B. Balsler</i> | <i>12th Middlesex</i> |
| <i>Josh S. Cutler</i> | <i>6th Plymouth</i> |
| <i>Paul R. Heroux</i> | <i>2nd Bristol</i> |
| <i>Timothy R. Whelan</i> | <i>1st Barnstable</i> |
| <i>John W. Scibak</i> | <i>2nd Hampshire</i> |
| <i>Mike Connolly</i> | <i>26th Middlesex</i> |
| <i>Joan B. Lovely</i> | <i>Second Essex</i> |
| <i>Adam G. Hinds</i> | <i>Berkshire, Hampshire, Franklin and Hampden</i> |
| <i>Denise Provost</i> | <i>27th Middlesex</i> |

| | |
|--------------------------|------------------------------------|
| <i>Thomas P. Walsh</i> | <i>12th Essex</i> |
| <i>Peter V. Kocot</i> | <i>1st Hampshire</i> |
| <i>Eric P. Lesser</i> | <i>First Hampden and Hampshire</i> |
| <i>James B. Eldridge</i> | <i>Middlesex and Worcester</i> |

HOUSE No. 1228

By Mr. Tosado of Springfield, a petition (accompanied by bill, House, No. 1228) of Jose F. Tosado and others relative to cost control of pharmaceutical drug prices. Public Health.

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act to promote transparency and cost control of pharmaceutical drug prices.

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 6D of the General Laws is hereby amended by inserting after
2 section 18 the following new sections:–

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4 Section 19. (a) The commission, in consultation with the center, shall develop a list of
5 critical prescription drugs for which there is a substantial public interest in understanding the
6 development of its pricing. In developing the list, the commission shall include the top twenty
7 selling drugs in the commonwealth, and other drugs based on the following factors: (i) the cost
8 of the drug to public health care programs, including the office of Medicaid and the group
9 insurance commission; (ii) the current cost of the drug in the commonwealth; (iii) the extent of
10 utilization of the drug within the commonwealth; (iv) the seriousness and prevalence of the
11 disease or condition that is treated by the drug; (v) identification of the drug as low comparative
12 value by an independent non-profit organization; and (vi) the potential impact of the cost of the

13 drug on the commonwealth's achievement of the statewide health care cost growth benchmark,
14 as established by section 9.

15

16 (b) For each prescription drug that the commission places on the critical prescription drug
17 list pursuant to subsection (a), the commission shall require the manufacturers of said
18 prescription drug to report the following information to the commission:

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20 i. Total cost of production, and approximate cost of production per dose;

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22 ii. Research and development costs of the drug, including:

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24 a. research and development costs paid with public funds, including any amount from
25 federal, state, or other governmental programs or any form of subsidies, grants, or other support;

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27 b. after-tax research and development costs paid by the manufacturer;

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29 c. research and development costs consisting of payments to predecessor entities;

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31 d. research and development costs paid by third parties; and

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33 e. the costs to acquire the intellectual property rights to a drug, including costs for the
34 purchase of patents, licensing, or acquisition of any corporate entity owning any rights to the
35 drug while in development.

36

37 iii. Marketing and advertising costs for the drug, apportioned by marketing activities that
38 are directed to consumers, marketing activities that are directed to prescribers, expenses lobbying
39 governments, and the total cost of all marketing and advertising that is directed primarily to
40 Massachusetts consumers and prescribers, including, but not limited to, prescriber detailing,
41 copayment discount coupons or other programs and direct-to-consumer marketing;

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43 iv. Prices for the drug that are charged to purchasers outside the United States, by
44 country, for a representative set of countries determined by the commission;

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46 v. Prices charged to typical Massachusetts purchasers, which may include but not be
47 limited to, pharmacies, pharmacy chains, pharmacy wholesalers, or other direct purchasers;

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49 vi. The price paid by the United States Veterans Administration for the drug, if the drug
50 is purchased by the Veterans Administration;

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52 vii. The average profit margin of the drug over the prior five-year period and the
53 projected profit margin anticipated for such drug in the coming year; and

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55 viii. True net typical prices charged to pharmacy benefit managers, health plans or state
56 agencies, including the group insurance commission, and MassHealth. “True net prices” means
57 the average reimbursement cost of the drug, net of any rebates or other payments from the
58 manufacturer to the pharmacy benefit manager, health plan or state agency and the pharmacy
59 benefit manager to the manufacturer. These “true net prices” shall be reported on an aggregated
60 basis, without reference to specific pharmacy benefit managers, health plans or state agencies.

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62 (c) The commission shall promulgate regulations to further define and enforce the
63 provisions of this section, which may include monetary penalties of not more than \$100,000 for
64 each failure to comply with the requirements of this section.

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66 (d) The commission with the assistance of the center shall prepare an annual report on
67 prescription drug prices and their role in overall health care spending in the commonwealth
68 based on the data submitted to the commission pursuant to paragraph (b). As part of the report,
69 the commission may include recommendations for actions to lower prescription drug costs and
70 spending across the commonwealth while maintaining access to high quality health care. The
71 commission’s report shall be posted on the commission’s website and shall be filed with the

72 clerks of the house of representatives and the senate, the house and senate committees on ways
73 and means, and the joint committee on health care financing, each year prior to the commission's
74 annual hearings pursuant to section 8.

75

76 Section 20. (a) The commission shall annually identify, using information submitted to
77 the commission pursuant to section 19, those critical prescription drugs that due to their cost,
78 jeopardize the commonwealth's ability to meet the statewide health care cost growth benchmark,
79 as established by section 9, or where the cost is excessively higher than justified taking into
80 account the data submitted under subsection (b) of section 19. In reviewing the data and making
81 a determination under this subsection, the commission shall review and consider all data reported
82 to the commission and the center and determine whether the price of the prescription drug is
83 excessively high given: (i) the prescription drug's medical benefits, (ii) the cost to develop and
84 manufacture the prescription drug, and (iii) the prices charged by the manufacturer in other
85 countries. The commission may also consult with non-profit organizations that study and
86 compare the clinical effectiveness and value of prescription drugs.

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89 SECTION 4. Notwithstanding any special or general law to the contrary, the health
90 policy commission, in consultation with the center for health information and analysis and the
91 department of public health, shall conduct and complete an analysis of the impact on health care
92 costs of the use of discounts, rebates, coupons, copay waivers, patient assistance programs,
93 product vouchers or other reduction in an individual's out-of-pocket expenses, hereinafter

94 referred to as “coupons”, for biological products and prescription drugs authorized under
95 subsection (b) of section 3 of chapter 175H of the General Laws. The report shall include, but
96 not be limited to: (i) the total number of such coupons redeemed in the commonwealth; (ii) the
97 total value of such coupons redeemed in the commonwealth; (iii) an analysis of the types of
98 biological products and prescription drugs for which such coupons were most frequently
99 redeemed; (iv) a comparison of any change in utilization of generic versus brand name
100 prescription drugs; (v) a comparison of any change in utilization of among therapeutically-
101 equivalent brand name drugs; (vi) the effect on patient adherence to prescribed drugs; (vii)
102 patient access to innovative therapies; (viii) an analysis of the availability of such coupons upon
103 renewals; (ix) an analysis of the cost impact to consumers upon expiration of such coupons; (x)
104 an analysis of the impact on commercial health insurance premiums, attributed to both employers
105 and individuals; (xi) an analysis of the impact on any health care cost containment goals adopted
106 by the commonwealth; (xii) an analysis of the impact on premiums associated with the group
107 insurance commission; and (xiii) whether such coupons are remuneration that induces a referral
108 of a medical service, thus violating health care fraud and abuse laws.

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110 To conduct its evaluation, the commission may contract with an outside organization
111 with expertise in the analysis of health care financing. In conducting its evaluation, the
112 commission may require that manufacturers of biological products and prescription drugs report
113 on the number and types of such coupons which such manufacturers have issued and which have
114 been redeemed in the commonwealth.

115 The commission shall file a report of its findings with the clerks of the senate and house
116 of representatives, the house and senate committees on ways and means and the joint committee
117 on health care financing on or before January 1, 2018.