

**HOUSE . . . . . No. 618**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

*David M. Nangle*

*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 strengthening market impact review.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>David M. Nangle</i>	<i>17th Middlesex</i>	<i>1/18/2017</i>

**HOUSE . . . . . No. 618**

By Mr. Nangle of Lowell, a petition (accompanied by bill, House, No. 618) of David M. Nangle for legislation to strengthen health care provider market impact reviews. Health Care Financing.

**The Commonwealth of Massachusetts**

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

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:*

1 SECTION 1. Chapter 6D of the General Laws, as appearing in the 2014 Official Edition,  
2 is hereby amended by striking section 13 in its entirety and replacing it with the following new  
3 language:-

4  
5 Section 13. (a) Every provider or provider organization shall, before making any material  
6 change to its operations or governance structure, submit notice to the commission, the center and  
7 the attorney general of such change, not fewer than 60 days before the date of the proposed  
8 change. Material changes shall include, but not be limited to: a corporate merger, acquisition or  
9 affiliation of a provider or provider organization and a carrier; mergers or acquisitions of  
10 hospitals or hospital systems; acquisition of insolvent provider organizations; and mergers or  
11 acquisitions of provider organizations which will result in a provider organization having a near-  
12 majority of market share in a given service or region.

13           Within 30 days of receipt of a notice filed under the commission's regulations, the  
14 commission shall conduct a preliminary review to determine whether the material change is  
15 likely to result in a significant impact on the commonwealth's ability to meet the health care cost  
16 growth benchmark, established in section 9, or on the competitive market. If the commission  
17 finds that the material change is likely to have a significant impact on the commonwealth's  
18 ability to meet the health care cost growth benchmark, or on the competitive market, the  
19 commission shall conduct a cost and market impact review under this section.

20           (b) In addition to the grounds for a cost and market impact review set forth in subsection  
21 (a), if the commission finds, based on the center's annual report, that the percentage change in  
22 total health care expenditures exceeded the health care cost growth benchmark in the previous  
23 calendar year, the commission shall conduct a cost and market impact review of any provider  
24 organization identified by the center under section 16 of chapter 12C.

25           (c) The commission shall initiate a cost and market impact review by sending the  
26 provider or provider organization notice of a cost and market impact review which shall explain  
27 the basis for the review and the particular factors that the commission seeks to examine through  
28 the review. The provider organization shall submit to the commission, within 21 days of the  
29 commission's notice, a written response to the notice, including, but not limited to, any  
30 information or documents sought by the commission which are described in the commission's  
31 notice.

32           (d) A cost and market impact review may examine factors relating to the provider or  
33 provider organization's business and its relative market position, including, but not limited to:

34 (i) the provider or provider organization's size and market share within its primary  
35 service areas by major service category, and within its dispersed service areas; (ii) the provider  
36 or provider organization's prices for services, including its relative price compared to other  
37 providers for the same services in the same market; (iii) the provider or provider organization's  
38 health status adjusted total medical expense, including its health status adjusted total medical  
39 expense compared to similar providers; (iv) the quality of the services it provides, including  
40 patient experience; (v) provider cost and cost trends in comparison to total health care  
41 expenditures statewide; (vi) the availability and accessibility of services similar to those  
42 provided, or proposed to be provided, through the provider or provider organization within its  
43 primary service areas and dispersed service areas; (vii) the provider or provider organization's  
44 impact on competing options for the delivery of health care services within its primary service  
45 areas and dispersed service areas including, if applicable, the impact on existing service  
46 providers of a provider or provider organization's expansion, affiliation, merger or acquisition, to  
47 enter a primary or dispersed service area in which it did not previously operate; (viii) the  
48 methods used by the provider or provider organization to attract patient volume and to recruit or  
49 acquire health care professionals or facilities; (ix) the methods used by the provider or provider  
50 organization to direct patient care to the appropriate and lowest-cost setting within its system and  
51 to eliminate unnecessary duplication of health care services within the system; (x) the role of the  
52 provider or provider organization in serving at-risk, underserved and government payer patient  
53 populations, including those with behavioral, substance use disorder and mental health  
54 conditions, within its primary service areas and dispersed service areas; (xi) the role of the  
55 provider or provider organization in providing low margin or negative margin services within its  
56 primary service areas and dispersed service areas; (xii) consumer concerns, including but not

57 limited to, complaints or other allegations that the provider or provider organization has engaged  
58 in any unfair method of competition or any unfair or deceptive act or practice; and (xiii) any  
59 other factors that the commission determines to be in the public interest.

60 (e) The commission shall make factual findings and issue a preliminary report on the cost  
61 and market impact review within 180 days. If the Commission finds in its review that the  
62 provider organization's request: (i) has resulted or is likely to result in any unfair method of  
63 competition;(ii) has resulted or is likely to result in any unfair or deceptive act or practice, (iii)  
64 has resulted or is likely to result in increased health care costs that threaten the health care cost  
65 growth benchmark; (iv) will substantially lessen competition, or otherwise violate antitrust laws;  
66 (v) will not result in or produce increased efficiencies, higher quality of care and lower costs for  
67 payers and patients; or (vi) there is no persuasive evidence that the proposed lower costs,  
68 efficiencies, and improvements to quality can only be achieved through this transaction, the  
69 Commission may deny the provider's request for a material change. At any time during its  
70 review, the Commission may refer its findings, together with any supporting documents, data or  
71 information to the attorney general for further review and action.

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73 (f) Within 30 days after issuance of a preliminary report, the provider or provider  
74 organization may respond in writing to the findings in the report. The commission shall then  
75 issue its final report. If the commission approves the transaction the commission shall forward its  
76 decision to the attorney general, who shall make an independent legal determination as to  
77 whether the transaction satisfies the requirements of state and federal antitrust law and any and  
78 all guidance issued by the U.S. Department of Justice and the Federal Trade Commission.

79

80 (g) Any provider organization aggrieved by any such decision by the Commission to  
81 deny a request for a material change may request an adjudicatory hearing pursuant to chapter  
82 thirty A within twenty-one days of the Commission's decision. The Commission shall notify the  
83 attorney general and the division of insurance upon receipt of such hearing request. Said hearing  
84 shall be conducted within thirty days of the Commission's receipt of the hearing request. The  
85 attorney general may intervene in a hearing under this subsection and may require the production  
86 of additional information or testimony. The Commission shall issue a written decision within  
87 thirty days of the conclusion of the hearing.

88

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

94 (i) When the commission, under subsection (f), refers a report on a provider or provider  
95 organization to the attorney general, the attorney general may: (i) conduct an investigation to  
96 determine whether the provider or provider organization engaged in unfair methods of  
97 competition or anti-competitive behavior in violation of chapter 93A or any other law; (ii) report  
98 to the commission in writing the findings of the investigation and a conclusion as to whether the  
99 provider or provider organization engaged in unfair methods of competition or anti-competitive  
100 behavior in violation of chapter 93A or any other law; and (iii) if appropriate, take action under

101 chapter 93A or any other law to protect consumers in the health care market. The commission's  
102 final report may be evidence in any such action.

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

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

111 (l) Nothing in this section shall limit the application of other laws or regulations that may  
112 be applicable to a provider or provider organization, including laws and regulations governing  
113 insurance.