

**HOUSE . . . . . No. 3551**

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**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:	DATE ADDED:
<i>José F. Tosado</i>	<i>9th Hampden</i>	<i>1/17/2019</i>
<i>Carlos González</i>	<i>10th Hampden</i>	<i>1/17/2019</i>
<i>Bud L. Williams</i>	<i>11th Hampden</i>	<i>1/18/2019</i>
<i>Carmine Lawrence Gentile</i>	<i>13th Middlesex</i>	<i>1/23/2019</i>
<i>Denise C. Garlick</i>	<i>13th Norfolk</i>	<i>2/1/2019</i>
<i>Diana DiZoglio</i>	<i>First Essex</i>	<i>2/1/2019</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>	<i>2/1/2019</i>
<i>Colleen M. Garry</i>	<i>36th Middlesex</i>	<i>2/1/2019</i>
<i>Stephan Hay</i>	<i>3rd Worcester</i>	<i>2/1/2019</i>
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>	<i>2/1/2019</i>
<i>Liz Miranda</i>	<i>5th Suffolk</i>	<i>2/1/2019</i>

**HOUSE . . . . . No. 3551**

By Mr. Tosado of Springfield, a petition (accompanied by bill, House, No. 3551) of José F. Tosado and others for legislation to promote transparency and cost control of pharmaceutical drug prices. Elder Affairs.

**The Commonwealth of Massachusetts**

**In the One Hundred and Ninety-First General Court  
(2019-2020)**

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:—

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

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

14 (b) For each prescription drug that the commission places on the critical prescription drug  
15 list pursuant to subsection (a), the commission shall require the manufacturers of said  
16 prescription drug to report the following information to the commission, including but not  
17 limited to:

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

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

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

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

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

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

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

29 iii. Marketing and advertising costs for the drug, apportioned by marketing activities that  
30 are directed to consumers, marketing activities that are directed to prescribers, expenses lobbying  
31 governments, and the total cost of all marketing and advertising that is directed primarily to

32 Massachusetts consumers and prescribers, including, but not limited to, prescriber detailing, co-  
33 payment discount coupons or other programs and direct-to-consumer marketing;

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

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

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

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

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

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

51 (d) The commission with the assistance of the center shall prepare an annual report on  
52 prescription drug prices and their role in overall health care spending in the commonwealth

53 based on the data submitted to the commission pursuant to paragraph (b). As part of the report,  
54 the commission may include recommendations for actions to lower prescription drug costs and  
55 spending across the commonwealth while maintaining access to high quality health care. The  
56 commission's report shall be posted on the commission's website and shall be filed with the  
57 clerks of the house of representatives and the senate, the house and senate committees on ways  
58 and means, and the joint committee on health care financing, each year prior to the commission's  
59 annual hearings pursuant to section 8.

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

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

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

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

96 The commission shall file a report of its findings with the clerks of the senate and house  
97 of representatives, the house and senate committees on ways and means and the joint committee  
98 on health care financing on or before January 1, 2020.