

SENATE No. 552

The Commonwealth of Massachusetts

PRESENTED BY:

Nick Collins

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 in prescription drug prices.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Nick Collins</i>	<i>First Suffolk</i>	
<i>Carmine Lawrence Gentile</i>	<i>13th Middlesex</i>	<i>1/22/2019</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>	<i>1/30/2019</i>
<i>Rebecca L. Rausch</i>	<i>Norfolk, Bristol and Middlesex</i>	<i>1/30/2019</i>
<i>Patrick M. O'Connor</i>	<i>Plymouth and Norfolk</i>	<i>1/30/2019</i>
<i>Eric P. Lesser</i>	<i>First Hampden and Hampshire</i>	<i>2/1/2019</i>

SENATE No. 552

By Mr. Collins, a petition (accompanied by bill, Senate, No. 552) of Nick Collins, Carmine Lawrence Gentile, Michael O. Moore, Rebecca L. Rausch and other members of the General Court for legislation to promote transparency in prescription drug prices. Financial Services.

The Commonwealth of Massachusetts

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

An Act to promote transparency in prescription 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 amended by adding the following new
2 Sections

3 Section 1. PHARMACEUTICAL COST TRANSPARENCY

4 (a) As used in this section:

5 (1) “Manufacturer” means the person that holds the application for a drug approved under
6 section 505 of the Federal Food, Drug, and Cosmetic Act or the license issued under section 351
7 of the Public Health Service Act, or who is responsible for setting the price for the drug.

8 (2) “Prescription drug” means a drug as defined in 21 U.S.C. § 321.

9 (b)(1) The Health Policy Commission, in collaboration with the Center for Health
10 Information and Analysis, shall identify annually up to 15 prescription drugs on which the State
11 spends significant health care dollars and for which the wholesale acquisition cost has increased

12 by 50 percent or more over the past five years or by 15 percent or more over the past 12 months,
13 or is a new drug whose price may have a significant impact on the cost benchmark.

14 The drugs identified shall represent different drug classes.

15 (2) The Commission shall provide to the Office of the Attorney General the list of
16 prescription drugs developed pursuant to this subsection and the percentage of the wholesale
17 acquisition cost increase for each drug and shall make the information available to the public on
18 the Commission's website.

19 (c)(1) For each prescription drug identified pursuant to subsection (b) of this section, the
20 Office of the Attorney General shall require the drug's manufacturer to provide a justification for
21 the increase in the wholesale acquisition cost of the drug in a format that the Attorney General
22 determines to be understandable and appropriate. The manufacturer shall submit to the Office of
23 the Attorney General all relevant information and supporting documentation necessary to justify
24 the manufacturer's wholesale acquisition cost increase, which may include:

25 (A) all factors that have contributed to the wholesale acquisition cost increase;

26 (B) the percentage of the total wholesale acquisition cost increase attributable to each
27 factor; and

28 (C) an explanation of the role of each factor in contributing to the wholesale acquisition
29 cost increase.

30 (2) Nothing in this section shall be construed to restrict the legal ability of a prescription
31 drug manufacturer to change prices to the extent permitted under federal law.

32 (d) The Attorney General shall provide an Annual Prescription Drug Transparency
33 Report to the Legislature, the Health Policy Commission and the Center for Health Information
34 and Analysis on or before December 1 of each year based on the information received from
35 manufacturers pursuant to this section. The Attorney General shall also post the report on the
36 Office of the Attorney General’s website.

37 (e) (2) In carrying out this section the Attorney General and the Health Policy
38 Commission shall ensure the protection of confidential commercial information and trade
39 secrets.

40 (f) The Attorney General may bring an action for injunctive relief, costs, and attorney’s
41 fees, and to impose on a manufacturer that fails to provide the information required by
42 subsection (c) of this section a civil penalty of no more than \$10,000.00 per violation. Each
43 unlawful failure to provide information shall constitute a separate violation.

44 Section 2. REPORT ON PRICE INCREASES

45 (a) As used in this section:

46 (1) Average Manufacturer Price has the meaning given the term in section 1927(k)(1) of
47 the Social Security Act (42 U.S.C. 1396r-8(k)(1)). (2) “Manufacturer” means the person that
48 holds the application for a drug approved under section 505 of the Federal Food, Drug, and
49 Cosmetic Act or the license issued under section 351 of the Public Health Service Act, or who is
50 responsible for setting the price for the drug.

51 (b)(1) The manufacturer of a prescription drug shall submit a report to the Health Policy
52 Commission for each price increase of a prescription drug that will result in an increase in the

53 average manufacturer price of that drug that is equal to 10 percent or more over a 12-month
54 period or the introduction of a new drug whose price may threaten the cost benchmark. (2)
55 Each report described in paragraph (1) shall be submitted to the Health Policy Commission not
56 later than 30 days prior to the planned effective date of such price increase.

57 (c) A report under subsection (b) shall, at a minimum, include:

58 (1) With respect to the prescription drug—

59 (A) the percentage by which the manufacturer will raise the average manufacturer price
60 of the drug on the planned effective date of such price increase;

61 (B) a justification for, and description of, each manufacturer's price increase that
62 occurred during the 12-month period described in subsection (b)(1);

63 (C) the identity of the initial developer of the drug;

64 (D) a description of the history of the manufacturer's price increases for the drug since the
65 approval of the application for the drug under section 505 of the Federal Food, Drug, and
66 Cosmetic Act or the issuance of the license for the drug under section 351, or since the
67 manufacturer acquired such approved application or license;

68 (E) the current list price of the drug;

69 (F) the total expenditures of the manufacturer on—

70 (i) materials and manufacturing for such drug; and

71 (ii) acquiring patents and licensing for such drug;

72 (G) the percentage of total expenditures of the manufacturer on research and development
73 for such drug that was derived from Federal funds;

74 (H) the total expenditures of the manufacturer on research and development for such drug
75 that is used for—

76 (i) basic and preclinical research;

77 (ii) clinical research;

78 (iii) new drug development;

79 (iv) pursuing new or expanded indications for such drug through supplemental
80 applications under section 505 of the Federal Food, Drug, and Cosmetic Act; and

81 (v) carrying out post market requirements related to such drug, including those under
82 section 505(o)(3) of such Act;

83 (I) the total revenue and the net profit generated from the prescription drug for each
84 calendar year since the approval of the application for the drug under section 505 of the Federal
85 Food, Drug, and Cosmetic Act or the issuance of the license for the drug under section 351, or
86 since the manufacturer acquired such approved application or license; and

87 (J) the total costs associated with marketing and advertising for the prescription drug;

88 (2) With respect to the manufacturer:

89 (A) the total revenue and the net profit of the manufacturer for the 12-month period
90 described in subsection (b)(1);

91 (B) the amount the manufacturer has spent on dividends and stock repurchases and the
92 specific metrics used by the manufacturer to determine executive compensation, including any
93 stock-based performance metrics, for the 12-month period described in subsection (b)(1); and

94 (C) the amount the manufacturer has provided in funding to consumer and disease
95 advocacy groups for the 12-month period described in subsection (b)(1);

96 (D) any additional information the manufacturer chooses to provide related to drug
97 pricing decisions, such as total expenditures on—

98 (i) drug research and development; or

99 (ii) clinical trials on drugs that failed to receive approval by the Food and Drug
100 Administration; and

101 (3) such other related information as the Health Policy Commission considers
102 appropriate.

103 (d) The Attorney General may bring an action for injunctive relief, costs, and attorney's
104 fees, and to impose on a manufacturer that fails to provide the information required by
105 subsections (b) and (c) of this section a civil penalty of no more than \$10,000.00 per violation.
106 Each unlawful failure to provide information shall constitute a separate violation.

107 (e)(1) Not later than 30 days after the submission of a report under subsection (b), the
108 Health Policy Commission shall post the report on the public Website of the Commission.

109 (2) In carrying out this section the Health Policy Commission shall ensure the protection
110 of confidential commercial information and trade secrets.

111 SECTION 2. Section 8 of Chapter 6D of the General Laws is amended to read as follows:

112 (a) Not later than October 1 of every year, the commission shall hold public hearings
113 based on the report submitted by the center for health information and analysis under section 16
114 of chapter 12C comparing the growth in total health care expenditures to the health care cost
115 growth benchmark for the previous calendar year. The hearings shall examine health care
116 provider, provider organization, prescription drug manufacturer and private and public health
117 care payer costs, prices and cost trends, with particular attention to factors that contribute to cost
118 growth within the commonwealth's health care system.

119 (b) The attorney general may intervene in such hearings.

120 (c) Public notice of any hearing shall be provided at least 60 days in advance.

121 (d) The commission shall identify as witnesses for the public hearing a representative
122 sample of providers, provider organizations, prescription drug manufacturers, payers and others,
123 including: (i) at least 3 academic medical centers, including the 2 acute hospitals with the highest
124 level of net patient service revenue; (ii) at least 3 disproportionate share hospitals, including the 2
125 hospitals whose largest per cent of gross patient service revenue is attributable to Title XVIII and
126 XIX of the federal Social Security Act or other governmental payers; (iii) community hospitals
127 from at least 3 separate regions of the commonwealth; (iv) freestanding ambulatory surgical
128 centers from at least 3 separate regions of the commonwealth; (v) community health centers from
129 at least 3 separate regions of the commonwealth; (vi) the 5 private health care payers with the
130 highest enrollments in the commonwealth; (vii) any managed care organization that provides
131 health benefits under Title XIX; (viii) the group insurance commission; (ix) at least 3
132 municipalities that have adopted chapter 32B; (x) at least 4 provider organizations, at least 2 of
133 which shall be certified as accountable care organizations, 1 of which has been certified as a

134 model ACO, which shall be from diverse geographic regions of the commonwealth; (xi) the
135 prescription drug manufacturers whose drugs were identified in the latest Attorney General's
136 Annual Prescription Drug Transparency Report and (xii) any witness identified by the attorney
137 general or the center.

138 (e) Witnesses shall provide testimony under oath and subject to examination and cross
139 examination by the commission, the executive director of the center and the attorney general at
140 the public hearing in a manner and form to be determined by the commission, including, but not
141 limited to: (i) in the case of providers and provider organizations, testimony concerning payment
142 systems, care delivery models, payer mix, cost structures, administrative and labor costs, capital
143 and technology cost, adequacy of public payer reimbursement levels, reserve levels, utilization
144 trends, relative price, quality improvement and care-coordination strategies, investments in
145 health information technology, the relation of private payer reimbursement levels to public payer
146 reimbursements for similar services, efforts to improve the efficiency of the delivery system,
147 efforts to reduce the inappropriate or duplicative use of technology and the impact of price
148 transparency on prices; (ii) in the case of prescription drug manufacturers, testimony concerning
149 all factors that have contributed to significant cost increases for their drugs, the percentage of
150 cost increase attributable to each factor and an explanation of the role of each factor in
151 contributing to such cost increases and their efforts in moving to value based drug pricing, and
152 (iii) in the case of private and public payers, testimony concerning factors underlying premium
153 cost and rate increases, the relation of reserves to premium costs, efforts by the payer to reduce
154 the use of fee-for-service payment mechanisms, the payer's efforts to develop benefit design,
155 network design and payment policies that enhance product affordability and encourage efficient
156 use of health resources and technology including utilization of alternative payment

157 methodologies, efforts by the payer to increase consumer access to health care information,
158 efforts by the payer to promote the standardization of administrative practices, the impact of
159 price transparency on prices and any other matters as determined by the commission. The
160 commission shall solicit testimony from any payer which has been identified by the center's
161 annual report under subsection (a) of section 16 of chapter 12C as (1) paying providers more
162 than 10 per cent above or more than 10 per cent below the average relative price or (2) entering
163 into alternative payment contracts that vary by more than 10 per cent. Any payer identified by
164 the center's report shall explain the extent of price variation between the payer's participating
165 providers and describe any efforts to reduce such price variation.

166 (f) In the event that the center's annual report under subsection (a) of section 16 of
167 chapter 12C finds that the percentage change in total health care expenditures exceeded the
168 health care cost benchmark in the previous calendar year, the commission may identify
169 additional witnesses for the public hearing. Witnesses shall provide testimony subject to
170 examination and cross examination by the commission, the executive director of the center and
171 attorney general at the public hearing in a manner and form to be determined by the commission,
172 including, but not limited to: (i) testimony concerning unanticipated events that may have
173 impacted the total health care cost expenditures, including, but not limited to, a public health
174 crisis such as an outbreak of a disease, a public safety event or a natural disaster; (ii) testimony
175 concerning trends in patient acuity, complexity or utilization of services; (iii) testimony
176 concerning trends in input cost structures, including, but not limited to, the introduction of new
177 pharmaceuticals, medical devices and other health technologies; (iv) testimony concerning the
178 cost of providing certain specialty services, including, but not limited to, the provision of health
179 care to children, cancer-related health care and medical education; (v) testimony related to

180 unanticipated administrative costs for carriers, including, but not limited to, costs related to
181 information technology, administrative simplification efforts, labor costs and transparency
182 efforts; (vi) testimony related to costs due the implementation of state or federal legislation or
183 government regulation; and (vii) any other factors that may have led to excessive health care cost
184 growth.

185 (g) The commission shall compile an annual report concerning spending trends and
186 underlying factors, along with any recommendations for strategies to increase the efficiency of
187 the health care system. The report shall be based on the commission's analysis of information
188 provided at the hearings by providers, provider organizations and insurers, registration data
189 collected under section 11, data collected by the center for health information and analysis under
190 sections 8, 9 and 10 of chapter 12C and any other information the commission considers
191 necessary to fulfill its duties under this section, as further defined in regulations promulgated by
192 the commission. The report shall be submitted to the chairs of the house and senate committees
193 on ways and means and the chairs of the joint committee on health care financing and shall be
194 published and available to the public not later than December 31 of each year. The report shall
195 include any legislative language necessary to implement the recommendations.