HOUSE DOCKET, NO. 851 FILED ON: 1/17/2023

HOUSE . . . . . No. 978

The Commonwealth of Massachusetts

PRESENTED BY:

Edward F. Coppinger

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 relative to promoting healthcare access and affordability for patients.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Edward F. Coppinger	*10th Suffolk*	*1/17/2023*
Samantha Montaño	*15th Suffolk*	*2/27/2023*
Natalie M. Higgins	*4th Worcester*	*2/27/2023*

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HOUSE . . . . . No. 978

By Representative Coppinger of Boston, a petition (accompanied by bill, House, No. 978) of Edward F. Coppinger, Samantha Montaño and Natalie M. Higgins relative to healthcare access and affordability for patients. Financial Services.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court
(2023-2024)

An Act relative to promoting healthcare access and affordability for patients.

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

SECTION 1. Sections 131 and 226 of chapter 139 of the acts of 2012 are hereby repealed.

SECTION 2: Chapter 176O of the General Laws is hereby amended by adding the following section:-

Section 30. (a) For the purposes of this section, "estimated rebate" shall mean (1) negotiated price concessions including, but not limited to, base rebates and reasonable estimates of any price protection rebates and performance-based rebates that may accrue, directly or indirectly, to a carrier during the plan year from a pharmaceutical manufacturer, dispensing pharmacy, or other party to the transaction based on the amounts the carrier receives in the prior quarter or reasonably expects to receive in the current quarter; and (2) reasonable estimates of any fees and other administrative costs that are passed through to the carrier and serve to reduce

the carrier's prescription drug liabilities for the plan year based on the amounts the carrier received in the prior quarter or reasonably expects to receive in the current quarter.

(b) A carrier shall annually certify to the commissioner that, during the prior plan year, the carrier made available to the insured at least 80 percent of the estimated rebates received by such carrier by reducing the amount of cost sharing that it would otherwise charge at the point of sale except that the reduction amount shall not result in a credit at the point of sale. Neither the insured nor the carrier is responsible for any difference between the estimated rebate amount and the actual rebate amount the carrier receives provided that such estimates were calculated in good faith.

(c) Beginning April 1, 2026 and annually thereafter, a carrier shall file with the division a report in the manner and form determined by the commissioner demonstrating the manner in which the carrier has complied with this section. If the commissioner determines that a carrier has not complied with one or more requirements of this section, the commissioner shall notify the carrier of such noncompliance and a date by which the carrier must demonstrate compliance. If the carrier does not come into compliance by such date, the division shall impose a fine not to exceed $5,000 for each day during which such noncompliance continues.

(d) In making the disclosures required under this section, a carrier shall not publish or otherwise reveal information regarding, or that can be reasonably be calculated to reveal, the amount of rebates it receives, including, but not limited to, information regarding the amount of rebates it receives on a product-, manufacturer-, or pharmacy-specific basis. Such information shall be considered to be a trade secret and confidential commercial information, and shall not be a public record and shall be exempt from disclosure under clause Twenty-sixth of section 7 of

chapter 4 or section 10 of chapter 66. A carrier shall impose the confidentiality provision of this subsection on any vendor or third party that performs any services on behalf of the carrier and that may receive or have access to rebate or estimated rebate information.

(e) The commissioner shall adopt any written policies, procedures or regulations the commissioner determines necessary to implement this section.

SECTION 3. (a) Notwithstanding any general or special law to the contrary, the health policy commission, together with the secretary of the executive office of health and human services, shall conduct an analysis and issue a report on the future of cell and gene therapy in the commonwealth with the objective of addressing anticipated barriers to access that may exist with respect to such treatments for patients covered by MassHealth programs and other vulnerable populations. The analysis and report shall include, but not be limited to:

(1) a projection of the estimated total number of cell and gene therapy products, including information on the diseases and conditions such products will be approved to treat (including the total estimated number of lives impacted in the commonwealth, and the total number receiving care under MassHealth), that are expected to come to market in the U.S. (hereinafter the "products") during a forecast period of 2025 to 2035 (hereinafter, the "forecast period");

(2) an assessment of existing reimbursement frameworks and methodologies employed by MassHealth for the products to the extent purchased by health care facilities for administration to MassHealth beneficiaries during inpatient hospital stays;

(3) an assessment of whether the reimbursement frameworks and methodologies identified in subdivision (2) would lead to barriers to access to the products during the forecast

period in light of the projected costs to the Massachusetts health care system associated with the utilization of the products, and whether such barriers to access, if any, would disproportionately impact MassHealth beneficiaries or other vulnerable populations, including population groups that may be more likely to have adverse health outcomes due to experience with historic disparities or discrimination, including racial or ethnic minority population groups;

(4) An assessment of whether the health care facility infrastructure in place and planned for development during the forecast period, and that is necessary of the administration of the products, will be adequate to ensure equitable access for patients in need of treatment with the products.

(b) To the extent that the analysis required under subdivision (3) of subsection (a) identifies any barriers to access, the commission and the secretary shall analyze and report on the reasons for such barriers and shall propose corrective policy solutions. If any identified barriers are the result of or otherwise related to current MassHealth reimbursement methodologies for gene and cell therapies, the commission and the secretary shall propose modifications to such methodologies to the extent authorized under Federal law. Such proposed modifications shall address and be designed to eliminate any disproportionate impact of the access barriers on MassHealth beneficiaries or other vulnerable populations.

(c) In conducting the analysis and producing the report as required by subsection (a), the secretary and the commission shall consult with the Massachusetts Biotechnology Council or a designee, the Massachusetts Hospital Association or a designee, the Conference of Boston Teaching Hospitals or a designee, and the rare disease advisory council established pursuant to section 26 of chapter 260 of the acts of 2020.

(d) The report shall be made available electronically on the commission's website, and shall be filed with the secretary of administration and finance, the clerks of the house of representatives and the senate, the house and senate committees on ways and means and the joint committee on health care financing no later than July 30, 2025.