

SENATE No. 801

The Commonwealth of Massachusetts

PRESENTED BY:

Rebecca L. Rausch

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 health spending accountability processes within the health policy commission and the center for health information and analysis.

PETITION OF:

NAME:

Rebecca L. Rausch

DISTRICT/ADDRESS:

Norfolk, Worcester and Middlesex

SENATE No. 801

By Ms. Rausch, a petition (accompanied by bill, Senate, No. 801) of Rebecca L. Rausch for legislation to strengthen health spending accountability processes within the health policy commission and the center for health information and analysis. Health Care Financing.

The Commonwealth of Massachusetts

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

An Act strengthening health spending accountability processes within the health policy commission and the center for health information and analysis.

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 striking out section
2 10, as appearing in the 2020 Official Edition, and inserting in place thereof the following
3 section:-

4 Section 10. (a) For the purposes of this section, “health care entity” shall mean any entity
5 identified by the center under section 18 of chapter 12C.

6 (b) The commission shall provide notice to all health care entities that have been
7 identified by the center under section 18 of chapter 12C. Such notice shall state that the
8 commission may analyze the health care spending performance of individual health care entities
9 and may require certain actions, as established in this section, from health care entities so
10 identified.

11 (c) In addition to the notice provided under subsection (b), the commission may require
12 any health care entity that is identified by the center under section 18 of chapter 12C to file a
13 performance improvement plan with the commission. The commission shall provide written
14 notice to such health care entity that they are required to file a performance improvement plan.
15 Within 45 days of receipt of such written notice, the health care entity shall either: (1) file a
16 performance improvement plan with the commission; or (2) file an application with the
17 commission to waive or extend the requirement to file a performance improvement plan.

18 (d) The health care entity may file any documentation or supporting evidence with the
19 commission to support the health care entity's application to waive or extend the requirement to
20 file a performance improvement plan. The commission shall require the health care entity to
21 submit any other relevant information it deems necessary in considering the waiver or extension
22 application; provided, however, that such information shall be made public at the discretion of
23 the commission.

24 (e) The commission may waive or delay the requirement for a health care entity to file a
25 performance improvement plan in response to a waiver or extension request filed under
26 subsection (c) in light of all information received from the health care entity, based on a
27 consideration of the following factors:

28 (1) the spending, price and utilization trends of the health care entity over time, and any
29 demonstrated improvement to reduce spending or total medical expenses;

30 (2) any ongoing strategies or investments that the health care entity is implementing to
31 improve future long-term efficiency and spending performance;

32 (3) whether the factors that led to increased spending for the health care entity can
33 reasonably be considered to be unanticipated and outside of the control of the entity. Such factors
34 may include, but shall not be limited to, age and other health status factors and other cost inputs
35 such as pharmaceutical expenses and medical device expenses;

36 (4) the overall financial condition of the health care entity;

37 (5) a significant difference between the growth rate of potential gross state product and
38 the growth rate of actual gross state product, as determined under section 7H 1/2 of chapter 29;
39 and

40 (6) any other factors the commission considers relevant.

41 (f) If the commission declines to waive or extend the requirement for the health care
42 entity to file a performance improvement plan, the commission shall provide written notice to the
43 health care entity that its application for a waiver or extension was denied and the health care
44 entity shall file a performance improvement plan.

45 (g) A health care entity shall file a performance improvement plan: (1) within 45 days of
46 receipt of a notice under subsection (c); (2) if the health care entity has requested a waiver or
47 extension, within 45 days of receipt of a notice that such waiver or extension has been denied; or
48 (3) if the health care entity is granted an extension, on the date given on such extension. The
49 performance improvement plan shall identify the causes of the entity's spending performance and
50 shall include, but not be limited to, specific strategies, adjustments and action steps the entity
51 proposes to implement to improve spending performance. The proposed performance
52 improvement plan shall include specific identifiable and measurable expected outcomes and a

53 timetable for implementation. The timetable for a performance improvement plan shall not
54 exceed 18 months.

55 (h) The commission shall approve any performance improvement plan that it determines
56 is reasonably likely to address the underlying cause of the entity's spending performance and has
57 a reasonable expectation for successful implementation.

58 (i) If the board determines that the performance improvement plan is unacceptable or
59 incomplete, the commission may provide consultation on the criteria that have not been met and
60 may allow an additional time period, up to 30 calendar days, for resubmission.

61 (j) Upon approval of the proposed performance improvement plan, the commission shall
62 notify the health care entity to begin immediate implementation of the performance improvement
63 plan. Public notice shall be provided by the commission on its website, identifying that the health
64 care entity is implementing a performance improvement plan. All health care entities
65 implementing an approved performance improvement plan shall be subject to additional
66 reporting requirements and compliance monitoring, as determined by the commission. The
67 commission shall provide assistance to the health care entity in the successful implementation of
68 the performance improvement plan.

69 (k) All health care entities shall, in good faith, work to implement the performance
70 improvement plan. At any point during the implementation of the performance improvement
71 plan the health care entity may file amendments to the performance improvement plan, subject to
72 approval of the commission.

73 (l) At the conclusion of the timetable established in the performance improvement plan,
74 the health care entity shall report to the commission regarding the outcome of the performance

75 improvement plan. If the commission finds that the performance improvement plan was
76 unsuccessful, the commission shall either: (i) extend the implementation timetable of the existing
77 performance improvement plan; (ii) approve amendments to the performance improvement plan
78 as proposed by the health care entity; (iii) require the health care entity to submit a new
79 performance improvement plan under subsection (c); (iv) waive or delay the requirement to file
80 any additional performance improvement plans or (v) assess a civil penalty to the health care
81 entity of not more than the spending attributable to the health care entity that is in excess of the
82 health care cost growth benchmark minus any savings achieved through the performance
83 improvement plan. A civil penalty assessed under this subsection shall be deposited into the
84 Payment Reform Fund established under section 100 of chapter 194 of the Acts of 2011.

85 (m) Upon the successful completion of the performance improvement plan, the identity
86 of the health care entity shall be removed from the list of entities currently implementing a
87 performance improvement plan on the commission's website.

88 (n) The commission may submit a recommendation for proposed legislation to the joint
89 committee on health care financing if the commission determines that further legislative
90 authority is needed to achieve the health care quality and spending sustainability objectives of
91 this act, assist health care entities with the implementation of performance improvement plans, or
92 otherwise ensure compliance with the provisions of this section.

93 (o) (1) If the commission determines that a health care entity has: (i) willfully neglected
94 to file a performance improvement plan with the commission within 45 days as required under
95 subsection (c); (ii) failed to file an acceptable performance improvement plan in good faith with
96 the commission; (iii) failed to implement the performance improvement plan in good faith; or

97 (iv) knowingly failed to provide information required by this section to the commission or that
98 knowingly falsifies the same, the commission may assess a civil penalty to the health care entity
99 of not more than the spending attributable to the health care entity that is in excess of the health
100 care cost growth benchmark. A civil penalty assessed under this subsection shall be deposited
101 into the Payment Reform Fund established under section 100 of chapter 194 of the Acts of 2011.
102 The commission shall seek to promote compliance with this section and shall only impose a civil
103 penalty as a last resort.

104 (2) For entities for whom the commission has required a performance improvement plan
105 in the past, in lieu of requiring a performance improvement plan pursuant to this section, the
106 commission may assess a civil penalty on a health care entity identified by the center pursuant to
107 section 18 of chapter 12C if the commission determines that an additional performance
108 improvement plan is not an appropriate remedial measure. The civil penalty may be an amount
109 up to the spending attributable to the health care entity that is in excess of the health care cost
110 growth benchmark and shall be deposited into the Payment Reform Fund established under
111 section 100 of chapter 194 of the Acts of 2011.

112 (p) The commission shall promulgate regulations necessary to implement this section;
113 provided, however, that notice of any proposed regulations shall be filed with the joint
114 committee on state administration and regulatory oversight and the joint committee on health
115 care financing at least 180 days before adoption.

116 SECTION 2. Section 13 of said chapter 6D, as so appearing, is hereby amended by
117 striking out subsection (b) and inserting in place thereof the following subsection:-

118 (b) In addition to the grounds for a cost and market impact review set forth in subsection
119 (a), if the commission finds, based on the center's annual report, that the percentage change in
120 total health care expenditures exceeded the health care cost growth benchmark in the previous
121 calendar year, the commission may conduct a cost and market impact review of any provider or
122 provider organization identified by the center under section 18 of chapter 12C.

123 SECTION 3. Chapter 12C of the General Laws is hereby amended by striking out section
124 18, as appearing in the 2020 Official Edition, and inserting in place thereof the following
125 section:-

126 Section 18. The center shall perform ongoing analysis of data it receives under this
127 chapter to identify any entity, including but not limited to payers, providers or provider
128 organizations whose: (1) contribution to health care spending growth, including but not limited
129 to spending levels and growth as measured by total medical expense, is considered excessive and
130 who threaten the ability of the state to meet the health care cost growth benchmark established by
131 the health policy commission under section 9 of chapter 6D; or (2) data is not submitted to the
132 center in a proper, timely, or complete manner. The center shall provide a list of such entities to
133 the health policy commission such that the commission may pursue further action under section
134 10 of chapter 6D and post such list on its website. Referrals under this section shall not preclude
135 the center from using its authority under section 11 of this chapter.