SENATE . . . . . No. 3103

Senate, May 20, 2026 -- Text of amendment (787) (offered by Senator Rush) to the Ways and Means amendment (Senate, No. 4) to the House Bill making appropriations for the fiscal year 2027 for the maintenance of the departments, boards, commissions, institutions, and certain activities of the Commonwealth, for interest, sinking fund, and serial bond requirements, and for certain permanent improvements.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Fourth General Court
(2025-2026)

by adding the following section:-

"SECTION XX.

SUBSECTION 1. Health policy commission review and determination of unreasonable or excessive nonprofit hospital drug chargemaster pricing.

Chapter 6D of the General Laws is hereby amended by inserting after section 8A the following new section:-

Section 8B. Review of nonprofit hospital drug chargemaster pricing.

(a) Upon receipt of a referral from the center for health information and analysis pursuant to section 10B of chapter 12C, the commission may require the nonprofit hospital, within a reasonable time, to disclose to the commission information relating to the hospital's chargemaster pricing of any drug identified in the referral, on a standard reporting form developed by the commission, including but not limited to:

(i) the hospital's chargemaster pricing methodology and any schedule of increases for the drug during the previous 5 calendar years;

(ii) the hospital's written narrative description, suitable for public release, of the factors that contributed to the pricing of the drug;

(iii) the hospital's acquisition benchmark, reimbursement benchmark and any internal target margin or pricing rationale used in connection with the drug;

(iv) whether the drug was acquired, dispensed, replenished or accounted for as a 340B-acquired drug;

(v) whether the hospital used a different chargemaster price, markup formula, markup multiple, markup range or other pricing methodology for a 340B-acquired drug than for the same drug, a therapeutically comparable drug or a non-340B drug billed in the same setting; and

(vi) any other information the commission deems necessary to assess whether the hospital's chargemaster pricing is unreasonable or excessive.

(b) Records disclosed by a nonprofit hospital under this section shall: (i) be accompanied by an attestation that all information provided is true and correct; (ii) not be public records under clause Twenty-sixth of section 7 of chapter 4 or chapter 66 to the extent they contain trade secrets, competitively sensitive information or proprietary cost information; and (iii) remain confidential; provided, however, that the commission may produce a public report summarizing its findings in a manner that does not disclose exact supplier acquisition prices or other protected proprietary information.

(c) If, after review of records furnished under subsection (a), the commission determines that a nonprofit hospital's chargemaster pricing of a drug may be unreasonable or excessive, including without limitation because the chargemaster amount exceeds 120 per cent of ASP or is materially higher than the chargemaster amounts imposed by other similarly situated nonprofit hospitals for the same or a comparable drug, the commission shall, with not less than 30 days' advance notice to the nonprofit hospital, request that the nonprofit hospital provide further information related to the pricing of the drug and the hospital's justification for that pricing.

(d) Nothing in this section shall require a nonprofit hospital to disclose numerical acquisition cost, internal transfer price, rebate amount, 340B ceiling price, exact markup multiple, exact markup range, exact additive component, or other trade secret, competitively sensitive information, or proprietary cost information, or any information that would reveal or permit ready derivation of such information; provided, however, that, to the extent permitted by law, the commission may require a nonprofit hospital to submit such information on a confidential basis to the extent necessary to implement this section.

(e) In addition to the nonprofit hospital, the commission may identify other relevant parties, including but not limited to patients, providers, provider organizations, employers, carriers and public and private payers, who may provide information to the commission on a voluntary basis.

(f) In determining whether a nonprofit hospital's chargemaster pricing of a drug is unreasonable or excessive, the commission shall consider all relevant factors, including but not limited to:

(i) the relationship of the chargemaster amount to ASP;

(ii) the relationship of the chargemaster amount to acquisition cost, to the extent ascertainable;

(iii) the hospital's stated pricing methodology and whether the chargemaster amount is consistent with that methodology;

(iv) the hospital's reimbursement for the drug, stated separately for commercial insurance, Medicare Advantage, Medicaid managed care organizations, and any other payer category the commission deems relevant;

(v) patient cost-sharing exposure associated with the chargemaster amount;

(vi) whether the hospital applies materially different chargemaster prices, markup formulas, markup multiples or markup ranges to 340B-acquired drugs as compared to non-340B drugs;

(vii) whether any differential treatment of 340B-acquired drugs is justified by legitimate operational, accounting, compliance or patient-care considerations;

(viii) whether the hospital's pricing practices are consistent with its charitable mission, community benefit obligations and public representations concerning affordability and access;

(ix) whether similarly situated hospitals impose materially lower chargemaster amounts for the same or comparable drugs; and

(x) any other factor the commission deems relevant to determining whether the chargemaster pricing is unreasonable or excessive.

(g) Not later than 180 days after receipt of the information requested under subsection (a) or subsection (c), the commission shall issue a written report determining whether the nonprofit hospital's chargemaster pricing of 1 or more reviewed drugs is unreasonable or excessive.

(h) A report issued under subsection (g) shall be published on the commission's website and shall describe the drugs or categories of drugs reviewed in a manner sufficient to explain the commission's findings and recommendations; provided, however, that the report shall not disclose exact supplier acquisition prices, exact 340B ceiling prices, rebate amounts, or other information the disclosure of which would reveal or permit ready derivation of confidential or proprietary acquisition-cost information, supplier contract terms, rebate amounts, 340B ceiling prices, or other protected proprietary information. The report shall set forth the commission's findings, the basis for those findings, whether the commission found differential pricing treatment of 340B-acquired drugs as compared to non-340B drugs, and any corrective action recommended by the commission.

(i) Nothing in this section shall limit the authority of the commission under any other law.

SUBSECTION 2. Attorney general review, investigation, consideration of patient benefit, and enforcement.

Chapter 6D is hereby further amended by inserting the following new section:-

Section 8C: Attorney general review, investigation, consideration of patient benefit, and enforcement.

(a) Upon publication by the commission of a report under section 8B concluding that a nonprofit hospital's chargemaster pricing of a drug is unreasonable or excessive, the attorney

general may review the report, any supporting materials submitted to or prepared by the commission under section 8B or the center for health information and analysis under section 10B of chapter 12C, and any other materials lawfully available to the attorney general, and may determine whether to open an investigation.

(b) If, after such review, the attorney general determines that further inquiry is warranted, the attorney general may initiate an investigation into whether the nonprofit hospital continues to charge a chargemaster amount for the drug that is the same as or materially similar to the pricing found by the commission to be unreasonable or excessive.

(c) After initiating an investigation under subsection (b), the attorney general shall permit the nonprofit hospital an opportunity to submit a certification, in such form and with such supporting documentation as the attorney general may require, stating whether a majority of the revenue or margin attributable to the markup identified in the commission's report is utilized for the benefit of patients through lower out-of-pocket costs, including reduced cost sharing, reduced charges, copayment assistance, coinsurance assistance, free care, discounted care, or other comparable patient affordability measures.

(d) If the nonprofit hospital submits a certification under subsection (c), the attorney general may consider, without limitation:

(i) whether a majority of the markup is in fact used to reduce patient out-of-pocket costs or otherwise directly benefit patients;

(ii) whether such patient benefit is provided automatically or only upon application;

(iii) whether such patient benefit is substantial, documented, and reasonably connected to the drug pricing at issue; and

(iv) any other factor the attorney general deems relevant to whether and to what extent enforcement is warranted.

(e) If, after investigation, the attorney general determines that the nonprofit hospital continues to charge a chargemaster amount for the drug that is the same as or materially similar to the pricing found by the commission to be unreasonable or excessive, such conduct shall constitute an unfair or deceptive act or practice under chapter 93A, and the attorney general may bring an action under chapter 93A or any other applicable law for injunctive relief, restoration of money, civil penalties, costs, attorneys' fees, and such other relief as may be authorized by law; provided, however, that the attorney general shall take any certification and supporting documentation submitted under subsection (c), together with any other relevant facts and circumstances, into account in determining whether and to what extent enforcement is warranted.

(f) A certification submitted under subsection (c) shall not preclude the attorney general from:

(i) requiring additional information or documentation;

(ii) determining that the asserted patient benefit is inadequate, not sufficiently documented, or not reasonably related to the markup at issue;

(iii) bringing an action for false, misleading, or incomplete certification; or

(iv) pursuing enforcement under chapter 93A or any other applicable law if otherwise warranted.

(g) In any such action, the commission’s report may be offered in evidence for relevant factual purposes, including notice to the hospital, but shall not be conclusive on any question of law.

(h) Nothing in this act shall limit the authority of the attorney general under any other general or special law.

SUBSECTION 3. Center for health information and analysis nonptofit hospital drug chargemaster reporting and referral.

Chapter 12C of the General Laws is hereby amended by inserting after section 10A the following new section:-

Section 10B. Nonprofit hospital drug chargemaster reporting; referral of excessive pricing to the health policy commission.

(a) For purposes of this section, the following words shall, unless the context clearly requires otherwise, have the following meanings:-

"Average sales price" or "ASP", the average sales price determined and published by the centers for medicare and medicaid services for the applicable billing unit of a drug, biological product or other separately payable physician-administered drug.

"Chargemaster", the schedule, list, database, file or other repository maintained by a nonprofit hospital that contains the gross charges or standard charges assigned by the hospital to items and services, including drugs.

“Drug”, a prescription drug, biological product or other pharmaceutical item billed or potentially billable by a nonprofit hospital.

"Drug pricing category", a category or tier used by a nonprofit hospital to group 1 or more drugs for purposes of applying a common chargemaster pricing methodology.

"Markup formula", a hospital chargemaster pricing formula or other pricing methodology used to establish a drug’s chargemaster amount from 1 or more pricing inputs, including acquisition cost, average wholesale price, wholesale acquisition cost, average sales price, drug category, route of administration, preparation time or overhead-related inputs ; provided, however, that the term shall not include pricing for an outpatient prescription drug dispensed by a nonprofit hospital pharmacy and reimbursed solely under a pharmacy benefit, unless the charge for the drug is billed or potentially billable by the hospital as a hospital item or service.

"Markup multiple", the numerical factor or standard mark-up applied to a pricing input in order to establish a drug's chargemaster amount.

"Markup range", the tier, bounded range or other defined variation within a chargemaster pricing methodology under which different markup factors, ratios or standard mark-ups may apply to a drug category or pricing input.

“Nonprofit hospital”, an acute hospital, as defined in section 1 of chapter 6D, operating in the commonwealth that is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code and licensed or otherwise authorized to operate in the commonwealth, including any hospital-licensed outpatient department and any affiliate, parent or subsidiary to the extent it establishes, maintains, recommends or applies chargemaster pricing for drugs billed by such hospital; provided, however, that the term shall not include a comprehensive cancer center, specialty hospital, pediatric hospital or non-acute hospital.

"340B-acquired drug", a drug purchased or replenished through the 340B drug pricing program.

"340B drug pricing program", the federal drug pricing program described in 42 U.S.C. 256b.

(b) Subject to regulations promulgated by the center, each nonprofit hospital shall annually prepare and submit to the center a Drug Chargemaster Pricing Methodology Report. The report shall describe, in plain language and in sufficient technical detail to permit independent evaluation, the hospital's methodology for setting chargemaster prices for drugs. The report shall include, at a minimum:

(i) a description of each drug pricing category used by the hospital;

(ii) for each such category, the base input or inputs used to establish the chargemaster charge, including whether the hospital uses acquisition cost, average wholesale price, wholesale acquisition cost, average sales price, or another input;

(iii) for each such category, the markup formula or methodology used, if any, including any markup multiple or standard markup, any markup range, tier, floor or cap, any additive charge component, any rounding convention, and any other material rule, adjustment or factor used to establish the chargemaster price;

(iv) for each drug pricing category, the actual markup multiple then in effect or, if the hospital permits variation within the category, the actual markup range then authorized and used;

(v) a description of how the hospital distinguishes, for purposes of setting chargemaster prices, if at all, among high-cost drugs, low-cost drugs, specialty drugs, physician-administered

drugs, outpatient infusion drugs, 340B-acquired drugs and drugs dispensed or administered in provider-based departments, clinics or hospital outpatient departments;

(vi) a statement of whether the hospital uses different formulas, multiples, ranges or pricing methodologies depending on site of service, department, service line, or payer category, including commercial insurance, Medicare Advantage, and Medicaid managed care organizations, expected contract terms, charge-based reimbursement, case-rate reimbursement, percentage-of-charge reimbursement or other reimbursement variables;

(vii) a description of the frequency with which the hospital updates acquisition-cost inputs, markup formulas, markup multiples, markup ranges, pricing categories and chargemaster prices for drugs;

(viii) identification of the officer, committee, department or vendor responsible for recommending, reviewing, approving, implementing or auditing drug chargemaster formulas, markup multiples and markup ranges;

(ix) a description of all material changes made during the preceding calendar year to a drug pricing category, markup formula, markup multiple, markup range, pricing input, rounding convention or any other methodological component used to establish drug chargemaster prices;

(x) a numerical illustration using hypothetical acquisition costs sufficient to show how the disclosed formula, markup multiple or markup range produces a chargemaster amount;

(xi) the hospital's policy, if any, regarding whether drugs acquired at discounted prices, including 340B-acquired drugs, are assigned a different markup formula, markup multiple, markup range or other chargemaster methodology than non-discounted drugs;

(xii) an express statement, for each hospital using the 340B drug pricing program, whether the hospital uses the same markup formula, markup multiple and markup range for 340B-acquired drugs and non-340B drugs or a different markup formula, markup multiple, markup range or other pricing methodology for 340B-acquired drugs and non-340B drugs; and

(xiii) a certification, signed under the pains and penalties of perjury by the chief financial officer or equivalent officer, that the report fairly and accurately describes the methodology in effect for the applicable reporting period.

(c) In addition to the information required by subsection (b), each nonprofit hospital shall annually submit to the center a Drug Pricing Supplemental Schedule for the 100 drugs, or such greater number as the center may require by regulation, generating the highest aggregate reimbursement received by the nonprofit hospital during the prior calendar year from commercial insurance, Medicare Advantage, and Medicaid managed care organizations. For each listed drug, the schedule shall include:

(i) the drug name and such identifier as the center may require for accurate drug-level review and comparison, which may include HCPCS code, NDC, internal charge code or successor identifier;

(ii) the hospital's chargemaster amount for the reporting year, stated in the billing unit or other standardized unit prescribed by the center;

(iii) the drug pricing category to which the drug was assigned;

(iv) whether the drug's chargemaster amount was determined under a markup multiple methodology, markup range methodology, additive methodology, hybrid methodology or other methodology specified by the center;

(v) whether the drug was treated as a 340B-acquired drug or as 340B-eligible for acquisition-cost purposes in the hospital's pricing system during the reporting period;

(vi) the effective date of the most recent chargemaster price change for that drug;

(vii) the applicable average sales price for the drug during the reporting year, stated by billing unit or other standardized unit prescribed by the center;

(viii) the ratio of the hospital's chargemaster amount to average sales price for the drug during the reporting year; and

(ix) whether the hospital's chargemaster amount for the drug exceeded 120 per cent of average sales price during the reporting year.

(d) Nothing in this section shall require a nonprofit hospital to disclose numerical acquisition cost, internal transfer price, rebate amount, 340B ceiling price, exact markup multiple, exact markup range, exact additive component, or other trade secret, competitively sensitive information, or proprietary cost information, or any information that would reveal or permit ready derivation of such information; provided, however, to the extent permitted by law, that the center may require a nonprofit hospital to submit such information on a confidential basis to the extent necessary to implement this section.

(e) Not later than 90 days after receipt of a methodology report and supplemental schedule under this section, the center shall review the submission and shall refer to the health

policy commission for review under section 8B of chapter 6D any nonprofit hospital for which the center identifies 1 or more drugs on the supplemental schedule with a chargemaster amount exceeding 120 per cent of ASP.

(f) A referral under subsection (e) shall include the nonprofit hospital's report submitted under subsection (b) and supplemental schedule submitted under subsection (c), the center's analysis of the hospital's disclosed chargemaster methodology, the ASP comparison data and any additional information the center deems relevant to the commission's review, and any other information or data deemed necessary by the center.

(g) The center may also refer to the commission for review under Section 8B of chapter 6D any nonprofit hospital whose reported methodology, price ratios or changes in drug chargemaster pricing patterns otherwise suggest that hospital drug pricing warrants review in the interest of affordability, consumer protection or market oversight.

(h) Records disclosed by a nonprofit hospital under this section shall: (i) be accompanied by an attestation that all information provided is true and correct; (ii) not be public records under clause Twenty-sixth of section 7 of chapter 4 or chapter 66 to the extent they contain trade secrets, competitively sensitive information or proprietary cost information; and (iii) remain confidential; provided, however, that the center shall annually produce a public report summarizing each nonprofit hospital’s reports in a manner that does not disclose exact supplier acquisition prices, including exact 340B ceiling prices, rebate amounts or other information the disclosure of which would be likely to compromise the financial, competitive or proprietary nature of protected information.

(i) The center shall promulgate regulations necessary to implement this section, including regulations: (i) defining material change; (ii) specifying the required machine-readable format; (iii) establishing the number of drugs to be included in the supplemental schedule; (iv) setting standards for limited redaction of exact supplier acquisition prices while preserving meaningful public disclosure of pricing methodology and markup information; (v) specifying the methodology for calculating and reporting ASP comparisons; (vi) harmonizing disclosures under this section with other state and federal hospital price-transparency requirements; and (vii) establishing procedures for audits, corrections, amended filings and referrals to the health policy commission.

(j) The methodology report and supplemental schedule required by this section shall be filed not later than March 31 of each year, covering the preceding calendar year.

(k) A nonprofit hospital shall update its filing not later than 30 days after any material change to a drug chargemaster pricing methodology or other reportable information required by this section.

(l) A nonprofit hospital that fails to file, materially misstates, omits required information from, or fails timely to update a report or schedule required by this section shall be subject to a civil penalty of not more than: (i) $10,000 for an initial violation; (ii) $25,000 for a second violation within 3 years; and (iii) $50,000 for each subsequent violation within 3 years.

(m) Each day after notice of noncompliance and expiration of a cure period established by regulation may constitute a separate violation."