

# SENATE . . . . . No. 3140

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## The Commonwealth of Massachusetts

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

1 by adding in place thereof at the end:

2 SectionXX.

3 SECTIONXX-1. Health policy commission review and determination of unreasonable or  
4 excessive nonprofit hospital drug chagemaster pricing.

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

7 Section 8B. Review of nonprofit hospital drug chagemaster pricing.

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

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

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

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

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

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

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

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

33 (c) If, after review of records furnished under subsection (a), the commission determines  
34 that a nonprofit hospital's chargemaster pricing of a drug may be unreasonable or excessive,  
35 including without limitation because the chargemaster amount exceeds 120 per cent of ASP or is

36 materially higher than the chargemaster amounts imposed by other similarly situated nonprofit  
37 hospitals for the same or a comparable drug, the commission shall, with not less than 30 days'  
38 advance notice to the nonprofit hospital, request that the nonprofit hospital provide further  
39 information related to the pricing of the drug and the hospital's justification for that pricing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

88 SECTIONXX-2. Attorney general review, investigation, consideration of patient benefit,  
89 and enforcement.

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

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

93 (a) Upon publication by the commission of a report under section 8B concluding that a  
94 nonprofit hospital's chargemaster pricing of a drug is unreasonable or excessive, the attorney  
95 general may review the report, any supporting materials submitted to or prepared by the  
96 commission under section 8B or the center for health information and analysis under section 10B  
97 of chapter 12C, and any other materials lawfully available to the attorney general, and may  
98 determine whether to open an investigation.

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

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

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

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

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

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

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

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

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

130 (i) requiring additional information or documentation;

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

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

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

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

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

141 SECTIONXX-3. Center for health information and analysis nonprofit hospital drug  
142 chargemaster reporting and referral.

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

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

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

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

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

155 "Drug", a prescription drug, biological product or other pharmaceutical item billed or  
156 potentially billable by a nonprofit hospital.

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

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

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

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

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

178 "340B-acquired drug", a drug purchased or replenished through the 340B drug pricing  
179 program.

180 "340B drug pricing program", the federal drug pricing program described in 42 U.S.C.  
181 256b.

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

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

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

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

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

197 (v) a description of how the hospital distinguishes, for purposes of setting chargemaster  
198 prices, if at all, among high-cost drugs, low-cost drugs, specialty drugs, physician-administered  
199 drugs, outpatient infusion drugs, 340B-acquired drugs and drugs dispensed or administered in  
200 provider-based departments, clinics or hospital outpatient departments;

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

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

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

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

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

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

220 (xii) an express statement, for each hospital using the 340B drug pricing program,  
221 whether the hospital uses the same markup formula, markup multiple and markup range for

222 340B-acquired drugs and non-340B drugs or a different markup formula, markup multiple,  
223 markup range or other pricing methodology for 340B-acquired drugs and non-340B drugs; and

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

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

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

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

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

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

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

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

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

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

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

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

258 (e) Not later than 90 days after receipt of a methodology report and supplemental  
259 schedule under this section, the center shall review the submission and shall refer to the health  
260 policy commission for review under section 8B of chapter 6D any nonprofit hospital for which  
261 the center identifies 1 or more drugs on the supplemental schedule with a chargemaster amount  
262 exceeding 120 per cent of ASP.

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

268 (g) The center may also refer to the commission for review under Section 8B of chapter  
269 6D any nonprofit hospital whose reported methodology, price ratios or changes in drug  
270 chargemaster pricing patterns otherwise suggest that hospital drug pricing warrants review in the  
271 interest of affordability, consumer protection or market oversight.

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

281 (i) The center shall promulgate regulations necessary to implement this section, including  
282 regulations: (i) defining material change; (ii) specifying the required machine-readable format;  
283 (iii) establishing the number of drugs to be included in the supplemental schedule; (iv) setting  
284 standards for limited redaction of exact supplier acquisition prices while preserving meaningful

285 public disclosure of pricing methodology and markup information; (v) specifying the  
286 methodology for calculating and reporting ASP comparisons; (vi) harmonizing disclosures under  
287 this section with other state and federal hospital price-transparency requirements; and (vii)  
288 establishing procedures for audits, corrections, amended filings and referrals to the health policy  
289 commission.

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

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

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

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