SENATE DOCKET, NO. 1797 FILED ON: 1/16/2025

SENATE . . . . . No. 724

The Commonwealth of Massachusetts

PRESENTED BY:

Sal N. DiDomenico

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 promoting healthcare access and affordability for patients.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Sal N. DiDomenico	*Middlesex and Suffolk*

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SENATE . . . . . No. 724

By Mr. DiDomenico, a petition (accompanied by bill, Senate, No. 724) of Sal N. DiDomenico for legislation to promote healthcare access and affordability for patients. Financial Services.

The Commonwealth of Massachusetts

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

An Act 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 Sections 131 and 226 of chapter 139 of the acts of 2012 are hereby repealed.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 31. (a) As used in this section, the following words shall, unless the context clearly requires otherwise, have the following meanings:

"Cost-sharing", as defined in subsection (a) of section 21C of chapter 94C.

"Estimated rebate", any: (i) negotiated price concessions, whether described as a rebate or otherwise, including, but not limited to, base price concessions, and reasonable estimates of any price protection rebates and performance-based price concessions that may accrue, directly or indirectly, to a carrier, pharmacy benefit manager or other party on a carrier's behalf during a carrier's plan year from a pharmaceutical manufacturing company, dispensing pharmacy or other

party to the transaction based on the amounts the carrier received in the prior quarter or reasonably expects to receive in the current quarter; and (ii) reasonable estimates of any price concessions, fees and other administrative costs that are passed through, or are reasonably anticipated to be passed through to the carrier, pharmacy benefit manager or other party on the carrier's behalf and that 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.

"Pharmacy benefit manager", as defined in section 1 of chapter 176Y.

"Price protection rebate", a negotiated price concession that accrues directly or indirectly to the carrier, or other party on behalf of the carrier, including a pharmacy benefit manager, in the event of an increase in the wholesale acquisition cost of a drug that is greater than a specified threshold.

(b) A carrier, or any pharmacy benefit manager, shall make available to an insured at least 80 per cent of the estimated rebates received by such carrier, or any pharmacy benefit manager, by reducing the amount of defined cost-sharing that the carrier 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 shall be 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) Nothing in this section shall preclude a pharmacy benefit manager from decreasing an insured's defined cost-sharing by an amount greater than that required under subsection (b).

(d) Annually, not later than April 1, 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 1 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.

(e) In implementing the requirements of this section, the division shall only regulate a carrier or pharmacy benefit manager to the extent permissible under applicable law.

(f) A pharmacy benefit manager, its agent or any third-party administrator shall not publish or otherwise disclose information regarding the actual amount of rebates a carrier receives on a specific product or therapeutic class of products, manufacturer or pharmacy-specific basis. Such information shall be considered to be a trade secret and confidential commercial information, shall not be a public record as defined by clause Twenty-sixth of section 7 of chapter 4 or section 10 of chapter 66, and shall not be disclosed directly or indirectly, or in a manner that would allow for the identification of an individual product, therapeutic class of products or manufacturer, or in a manner that would have the potential to compromise the financial, competitive or proprietary nature of the information. A pharmacy benefit manager shall impose the confidentiality protections and requirements of this section on any agent or third-party administrator that performs health care or administrative services on behalf of the pharmacy benefit manager that may receive or have access to rebate related information.

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 2027 to 2037 (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, 2028.