

# MassSenate

## An Act enhancing the health care market review process (S.2871)

### Fact Sheet & Highlights

**An Act enhancing the health care market review process** builds on Massachusetts' long history of bringing transparency to the health care system while responding to a changing health care landscape. It improves the state's ability to constrain health care cost growth and ensure that high quality care is both affordable and accessible. The bill strengthens oversight of the major market groups including providers, insurers, pharmaceutical manufacturing companies, pharmacy benefit managers, for-profit entities, private equity firms, real estate investment trusts, and management services organizations. The bill significantly enhances the state's tools to safeguard the system and put patient needs first.

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### Health Care Market Transparency and Planning

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The bill expands the authority of state agencies charged with measuring and containing health care costs, and strengthens the health care market review process—all with the goal of stabilizing the system, advancing health equity and improving affordability and access to high quality care for residents.

**Health Policy Commission.** The Health Policy Commission (HPC) is an independent state agency that advances a more transparent, accountable and equitable health care system through data-driven policy recommendations on health care delivery and payment system reform. To strengthen the HPC's work while reflecting an evolving Massachusetts health care system, the bill adds members with expertise in hospital administration and in the development and pricing of pharmaceuticals to its Board of Commissioners. The Board is tasked with setting the state's health care cost growth benchmark, which is the limit for how much the HPC believes health care costs should grow over time. The bill changes the benchmark from a one year to a two year period to better account for irregularities in health care costs.

**Center for Health Information and Analysis.** While HPC provides policy recommendations regarding health care delivery, the Center for Health Information and Analysis (CHIA) monitors the health care system and provides analyses on the system's performance. To increase transparency, the bill authorizes CHIA to collect information from additional health care entities such as pharmaceutical companies and pharmacy benefit managers. The bill strengthens HPC's and CHIA's ability to ensure compliance with data reporting requirements by health care entities by enhancing the penalties for non-compliance.

The bill moves state health planning to HPC and the health care resources inventory to CHIA to better align with the work of these agencies. In developing the state health plan, HPC is directed to consider health equity goals. The bill also directs HPC and CHIA to set and measure health care affordability goals for the Commonwealth.

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### Health Care Market Oversight

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The bill updates several programs aimed at constraining health care costs and improving care quality, including the Determination of Need (DoN), Material Chance Notice (MCN), and Performance Improvement Plan (PIP) programs.

**Determination of Need.** The DoN process is a regulatory program overseen by the Department of Public Health (DPH) to review proposals to either expand health care facilities or change the services they offer. This bill increases coordination between state agencies involved in the DoN process by clarifying that DPH should not act on an application until HPC, CHIA, the Attorney General or other relevant agencies have been given reasonable opportunity to supply required information. This change will ensure that DPH has all the information it needs to more fully assess a proposal's potential impact on the provision of health care in the Commonwealth.

**Material Chance Notice.** A MCN is a requirement for providers and provider organizations to notify HPC of a proposed change to their operations or governance structure at least 60 days before the change is to go into effect. The bill adds new types of transactions that require a MCN, including significant new for-profit investment and acquisitions by for-profit entities, such as large for-profit physician organization and private equity firms, as well as the sale of assets for the purposes of a lease-back arrangement. Crucially, the bill gives HPC new authority to require providers to address concerns that their proposed change will significantly increase consumer costs, reduce the quality of care, or reduce access to services.

**Performance Improvement Plan.** The PIP is a process by which HPC can require entities that have exceeded the cost growth benchmark to reduce their spending. The bill provides more flexibility for CHIA to refer health care entities with excessive spending to HPC, which can require a PIP. In addition, the HPC is given new authority to assess a civil penalty instead of requiring a PIP.

**Private Equity and Pharmaceuticals.** Leading nationwide efforts, the bill also expands oversight of private equity firms, real estate investment trusts (REITs), and management services organizations (MSOs) involved with Massachusetts health care providers and provider organizations. In conjunction with the Senate's efforts to rein in the costs of prescription drugs through the PACT Act, the bill expands oversight of pharmaceutical manufacturing companies and pharmacy benefit managers (PBMs), and creates a licensing structure for PBMs. In addition to PBMs, the bill also establishes licensing structures for certain health care providers currently not licensed, and therefore not subject to DPH oversight, including office-based surgical centers, urgent care centers, and health care practices.

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### Health Insurance and Prior Authorization

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The bill establishes a health insurance bureau within the Division of Insurance (DOI) to conduct rate reviews of premium rates for health benefit plans, oversee the small group and individual health insurance market and affordable health plans—including coverage for young adults—and disseminate information to consumers about health insurance coverage.

In response to an increased number of consumer reports of delays in access to medications due to the need for prior authorizations, the bill requires a new insurance carrier to honor any prior authorizations approved by a previous carrier for at least 90 days following a patient's enrollment in the new health plan. Further, the bill requires that a prior authorization approval for medication prescribed for chronic disease management must be valid for the length of the prescription, up to 12 months.

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### Primary Care

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Access to primary care is proven to reduce health care costs, yet there is an extreme shortage of primary care providers in Massachusetts and across the country. To understand how to best build a sustainable primary care system, the bill establishes a task force to study and make recommendations to stabilize the primary care system and workforce, increase financial investment in primary care, and improve patient access to primary care.

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### Protecting Clinician Autonomy

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This bill protects clinicians' ability to make clinical decisions based on their professional judgement by making any policy that encroaches on this ability unenforceable. Additionally, the bill specifies who can own health care practices and limits MSOs' ability to control these practices. While MSOs were created to provide administrative and business support, these organizations have sought over time to increase profits by controlling practices, and by extension, the clinicians who work in them. Limiting MSOs' influence will help protect practitioners' clinical autonomy.