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CONTACT

Adrian Pforzheimer, Office of Senator Becca Rausch

Adrian.Pforzheimer@masenate.gov

Gray Milkowski, Office of Senate President Karen E. Spilka

Gray.Milkowski@masenate.gov

Stephen Acosta, Office of Senator Cindy F. Friedman

Stephen.Acosta@masenate.gov

Senate Passes Health Care Reform Boosting Safeguards Against For-Profit Entities

Bill strengthens health care market oversight and imposes guardrails on private equity investments

(BOSTON, MA) Yesterday the Massachusetts Senate passed urgent reforms to the Commonwealth's health care system to boost oversight and transparency in the market and improve patient access to prescribed medication and treatment.

Following debate, the Senate approved the legislation by a vote of 38-2.

The reforms in [S.2871](#) come as Massachusetts continues to manage challenges related to private equity's mismanagement in health care, which has created uncertainties for patients receiving care and the communities that the healthcare facilities serve. The legislation passed by the Senate would create strong systemic safeguards around private equity in healthcare, a significant step towards preempting future mismanagement.

"This bill better protects Bay Staters from rising health care costs while maintaining access to high quality care," said **Senator Becca Rausch (D-Needham)**. "I'm proud that this legislation includes two of my bills, which will expand cost containment tools to more comprehensively cover the health care industry and add oversight to more industry transactions, including expansions and corporate mergers. This legislation puts patients above profits and enhances transparency and accountability in health care market oversight. I am grateful to Senator Cindy Friedman, Senate President Karen Spilka, and Senate Ways and Means Chair Michael Rodrigues for their leadership and partnership, as well as the dedicated folks at the Health Policy Commission (HPC) and the Center for Health Information and Analysis (CHIA) for their daily hard work and expertise."

“Massachusetts is the health care capital of the world because we take seriously our responsibility to invest in and protect our systems, providers, and patients,” said **Senate President Karen E. Spilka (D-Ashland)**. “As we stare down a health care market plagued by high costs and the fallout from private equity mismanagement, the Senate has doubled down on our responsibility to our residents, making us a national leader in safeguarding patients, expanding access to care, and holding private equity accountable. I’m grateful to the unmatched work of Senator Friedman, the work of my colleagues, and the countless advocates who have contributed their voices to this legislation.”

“The Senate’s comprehensive health care market legislation passed today puts patients and providers back into the focus of the delivery of healthcare, rather than profits,” said **Senator Cindy F. Friedman (D-Arlington)**. “To ensure that a crisis similar to that surrounding Steward Health Care does not infiltrate our state’s health care system ever again, this bill modernizes and strengthens the health care oversight and transparency tools we have in the Commonwealth. This bill also provides protections for patients and providers, affords our health care regulatory agencies the needed flexibility and scope to oversee the industry as it evolves, and increases the financial transparency of major market players. I thank Senate President Spilka, Chair Rodrigues, and my Senate colleagues for their attention to these issues. Residents of Massachusetts deserve health care that is accessible, affordable, and high quality, and this bill continues the Senate’s goal to deliver just that.”

Provisions of *An Act enhancing the health care market review process* include:

Expanding oversight of Private Equity. Leading nationwide efforts, the bill 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 establishes licensing structures for certain health care providers currently not licensed, and therefore not subject to Department of Public Health (DPH) oversight, including office-based surgical centers, urgent care centers, and health care practices.

Improving Access to Primary Care. 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 system and workforce, increase financial investment in primary care, and improve patient access to primary care.

The bill moves state health planning to the Health Policy Commission (HPC) and the health care resources inventory to the Center for Health Information and Analysis (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.

Keeping Health Insurance Affordable. 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.

Cutting Red Tape for Prescription Access. In response to an increased number of consumer reports of delays accessing 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. The bill also requires that a prior authorization approval for medication and treatment prescribed for chronic disease management must be valid for the length of the prescription, up to 12 months.

Strengthening the Health Policy Commission (HPC). To strengthen the HPC's [work](#) to advance a transparent and equitable health system, the bill adds members with expertise in hospital administration and in the development and pricing of pharmaceuticals, biotechnology, or medical devices to its [Board of Commissioners](#).

The bill adjusts the HPC's setting of the health care cost growth benchmark—the limit of how much the HPC believes health care costs should grow over time—from one year to two years, to better account for irregularities in costs.

Boosting Transparency at the Center for Health Information and Analysis (CHIA). 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.

Protecting Practitioner Autonomy. This bill prevents businesses, such as MSOs and corporate employers of health care practitioners, from encroaching on the clinical autonomy of practitioners. While MSOs were created to provide practices with administrative and business support, in recent years, private equity firms and other corporations have started using MSOs to increase profits by controlling practices, and by extension, the practitioners who work in them. Patients deserve safe and appropriate care that is based on a practitioner's best professional judgment without the influence of business interests.

Managing Costs and Improving Quality of Care. The bill updates several programs aimed at constraining health care costs and improving care quality, including the [Determination of Need \(DoN\)](#), [Performance Improvement Plan \(PIP\)](#), and [Material Change Notice \(MCN\)](#), and programs.

Determination of Need. This bill increases coordination between state agencies involved in health care market review by clarifying that DPH should not act on a DoN 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.

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 the referred entity to file and implement a PIP. In addition, the HPC is given new authority to assess a civil penalty instead of requiring a PIP.

Material Change 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 organizations 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.

A previous version of this bill having passed the House of Representatives, the two branches will now reconcile the differences between the bills, before sending it to the Governor's desk.

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