

HOUSE No. 1016

The Commonwealth of Massachusetts

PRESENTED BY:

David M. Nangle

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 strengthening Market Impact Review.

PETITION OF:

NAME:

David M. Nangle

DISTRICT/ADDRESS:

17th Middlesex

HOUSE No. 1016

By Mr. Nangle of Lowell, a petition (accompanied by bill, House, No. 1016) of David M. Nangle for legislation to strengthen health care provider market impact review. Health Care Financing.

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

An Act strengthening Market Impact Review.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 13 of Chapter 6D is hereby amended by striking subsections (e)
2 through (k) and replacing them with the following new language:-

3 Section 13. (a) Every provider or provider organization shall, before making any material
4 change to its operations or governance structure, submit notice to the commission, the center and
5 the attorney general of such change, not fewer than 60 days before the date of the proposed
6 change. Material changes shall include, but not be limited to: a corporate merger, acquisition or
7 affiliation of a provider or provider organization and a carrier; mergers or acquisitions of
8 hospitals or hospital systems; acquisition of insolvent provider organizations; and mergers or
9 acquisitions of provider organizations which will result in a provider organization having a near-
10 majority of market share in a given service or region.

11 Within 30 days of receipt of a notice filed under the commission’s regulations, the
12 commission shall conduct a preliminary review to determine whether the material change is
13 likely to result in a significant impact on the commonwealth’s ability to meet the health care cost

14 growth benchmark, established in section 9, or on the competitive market. If the commission
15 finds that the material change is likely to have a significant impact on the commonwealth's
16 ability to meet the health care cost growth benchmark, or on the competitive market, the
17 commission shall conduct a cost and market impact review under this section.

18 (b) In addition to the grounds for a cost and market impact review set forth in subsection
19 (a), if the commission finds, based on the center's annual report, that the percentage change in
20 total health care expenditures exceeded the health care cost growth benchmark in the previous
21 calendar year, the commission shall conduct a cost and market impact review of any provider
22 organization identified by the center under section 16 of chapter 12C.

23 (c) The commission shall initiate a cost and market impact review by sending the
24 provider or provider organization notice of a cost and market impact review which shall explain
25 the basis for the review and the particular factors that the commission seeks to examine through
26 the review. The provider organization shall submit to the commission, within 21 days of the
27 commission's notice, a written response to the notice, including, but not limited to, any
28 information or documents sought by the commission which are described in the commission's
29 notice.

30 (d) A cost and market impact review may examine factors relating to the provider or
31 provider organization's business and its relative market position, including, but not limited to:

32 (i) the provider or provider organization's size and market share within its primary
33 service areas by major service category, and within its dispersed service areas; (ii) the provider
34 or provider organization's prices for services, including its relative price compared to other
35 providers for the same services in the same market; (iii) the provider or provider organization's

36 health status adjusted total medical expense, including its health status adjusted total medical
37 expense compared to similar providers; (iv) the quality of the services it provides, including
38 patient experience; (v) provider cost and cost trends in comparison to total health care
39 expenditures statewide; (vi) the availability and accessibility of services similar to those
40 provided, or proposed to be provided, through the provider or provider organization within its
41 primary service areas and dispersed service areas; (vii) the provider or provider organization's
42 impact on competing options for the delivery of health care services within its primary service
43 areas and dispersed service areas including, if applicable, the impact on existing service
44 providers of a provider or provider organization's expansion, affiliation, merger or acquisition, to
45 enter a primary or dispersed service area in which it did not previously operate; (viii) the
46 methods used by the provider or provider organization to attract patient volume and to recruit or
47 acquire health care professionals or facilities; (ix) the role of the provider or provider
48 organization in serving at-risk, underserved and government payer patient populations, including
49 those with behavioral, substance use disorder and mental health conditions, within its primary
50 service areas and dispersed service areas; (x) the role of the provider or provider organization in
51 providing low margin or negative margin services within its primary service areas and dispersed
52 service areas; (xi) consumer concerns, including but not limited to, complaints or other
53 allegations that the provider or provider organization has engaged in any unfair method of
54 competition or any unfair or deceptive act or practice; and (xii) any other factors that the
55 commission determines to be in the public interest.

56 (e) The commission shall make factual findings and issue a preliminary report on the cost
57 and market impact review within 180 days. If the Commission finds in its review that the
58 provider organization's request: (i) has resulted or is likely to result in any unfair method of

59 competition;(ii) has resulted or is likely to result in any unfair or deceptive act or practice, (iii)
60 has resulted or is likely to result in increased health care costs that threaten the health care cost
61 growth benchmark; (iv) will substantially lessen competition, or otherwise violate antitrust laws;
62 (v) will not result in or produce increased efficiencies, higher quality of care and lower costs for
63 payers and patients; or (vi) there is no persuasive evidence that the proposed lower costs,
64 efficiencies, and improvements to quality can only be achieved through this transaction, the
65 Commission may deny the provider's request for a material change. At any time during its
66 review, the Commission may refer its findings, together with any supporting documents, data or
67 information to the attorney general for further review and action.

68 (f) Within 30 days after issuance of a preliminary report, the provider or provider
69 organization may respond in writing to the findings in the report. The commission shall then
70 issue its final report. If the commission approves the transaction the commission shall forward its
71 decision to the attorney general, who shall make an independent legal determination as to
72 whether the transaction satisfies the requirements of state and federal antitrust law and any and
73 all guidance issued by the U.S. Department of Justice and the Federal Trade Commission.

74 (g) Any provider organization aggrieved by any such decision by the Commission to
75 deny a request for a material change may request an adjudicatory hearing pursuant to chapter
76 thirty A within twenty-one days of the Commission's decision. The Commission shall notify the
77 attorney general and the division of insurance upon receipt of such hearing request. Said hearing
78 shall be conducted within thirty days of the Commission's receipt of the hearing request. The
79 attorney general may intervene in a hearing under this subsection and may require the production
80 of additional information or testimony. The Commission shall issue a written decision within
81 thirty days of the conclusion of the hearing.

82 (h) A provider organization aggrieved by said written decision may, within twenty days
83 of said decision, file a petition for review in the supreme judicial court for Suffolk County.
84 Review by the supreme judicial court on the merits shall be limited to the record of the
85 proceedings before the commissioner and shall be based upon the standards set forth in
86 paragraph (7) of section fourteen of chapter thirty A.

87 (i) When the commission, under subsection (f), refers a report on a provider or provider
88 organization to the attorney general, the attorney general may: (i) conduct an investigation to
89 determine whether the provider or provider organization engaged in unfair methods of
90 competition or anti-competitive behavior in violation of chapter 93A or any other law; (ii) report
91 to the commission in writing the findings of the investigation and a conclusion as to whether the
92 provider or provider organization engaged in unfair methods of competition or anti-competitive
93 behavior in violation of chapter 93A or any other law; and (iii) if appropriate, take action under
94 chapter 93A or any other law to protect consumers in the health care market. The commission's
95 final report may be evidence in any such action.

96 (j) Nothing in this section shall limit the authority of the attorney general to protect
97 consumers in the health care market under any other law.

98 (k) The commission shall adopt regulations for conducting cost and market impact
99 reviews and for administering this section. These regulations shall include definitions of material
100 change and non-material change, primary service areas, dispersed service areas, dominant market
101 share, materially higher prices and materially higher health status adjusted total medical
102 expenses, and any other terms as necessary. All regulations promulgated by the commission shall
103 comply with chapter 30A.

104 (1) Nothing in this section shall limit the application of other laws or regulations that may
105 be applicable to a provider or provider organization, including laws and regulations governing
106 insurance.