HOUSE DOCKET, NO. 2655 FILED ON: 1/17/2019

HOUSE . . . . . No. 3551

The Commonwealth of Massachusetts

PRESENTED BY:

José F. Tosado

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 to promote transparency and cost control of pharmaceutical drug prices.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
José F. Tosado	*9th Hampden*
Carlos González	*10th Hampden*
Bud L. Williams	*11th Hampden*
Carmine Lawrence Gentile	*13th Middlesex*
Denise C. Garlick	*13th Norfolk*
Diana DiZoglio	*First Essex*
Michelle M. DuBois	*10th Plymouth*
Colleen M. Garry	*36th Middlesex*
Stephan Hay	*3rd Worcester*
David Henry Argosky LeBoeuf	*17th Worcester*
Liz Miranda	*5th Suffolk*

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By Mr. Tosado of Springfield, a petition (accompanied by bill, House, No. 3551) of José F. Tosado and others for legislation to promote transparency and cost control of pharmaceutical drug prices. Elder Affairs.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

An Act to promote transparency and cost control of pharmaceutical drug prices.

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. Chapter 6D of the General Laws is hereby amended by inserting after section 18 the following new sections:–

Section 19. (a) The commission, in consultation with the center, shall develop a list of critical prescription drugs for which there is a substantial public interest in understanding the development of its pricing. In developing the list, the commission shall include the top twenty selling drugs in the commonwealth, and other drugs based on the following factors: (i) the cost of the drug to public health care programs, including the office of Medicaid and the group insurance commission; (ii) the current cost of the drug in the commonwealth; (iii) the extent of utilization of the drug within the commonwealth; (iv) the seriousness and prevalence of the disease or condition that is treated by the drug; (v) identification of the drug as low comparative value by an independent non-profit organization; and (vi) the potential impact of the cost of the

drug on the commonwealth's achievement of the statewide health care cost growth benchmark, as established by section 9.

(b) For each prescription drug that the commission places on the critical prescription drug list pursuant to subsection (a), the commission shall require the manufacturers of said prescription drug to report the following information to the commission, including but not limited to:

i. Total cost of production, and approximate cost of production per dose;

ii. Research and development costs of the drug, including:

a. research and development costs paid with public funds, including any amount from federal, state, or other governmental programs or any form of subsidies, grants, or other support;

b. after-tax research and development costs paid by the manufacturer;

c. research and development costs consisting of payments to predecessor entities;

d. research and development costs paid by third parties; and

e. the costs to acquire the intellectual property rights to a drug, including costs for the purchase of patents, licensing, or acquisition of any corporate entity owning any rights to the drug while in development.

iii. Marketing and advertising costs for the drug, apportioned by marketing activities that are directed to consumers, marketing activities that are directed to prescribers, expenses lobbying governments, and the total cost of all marketing and advertising that is directed primarily to

Massachusetts consumers and prescribers, including, but not limited to, prescriber detailing, co-payment discount coupons or other programs and direct-to-consumer marketing;

iv. Prices for the drug that are charged to purchasers outside the United States, by country, for a representative set of countries determined by the commission;

v. Prices charged to typical Massachusetts purchasers, which may include but not be limited to, pharmacies, pharmacy chains, pharmacy wholesalers, or other direct purchasers;

vi. The price paid by the United States Veterans Administration for the drug, if the drug is purchased by the Veterans Administration;

vii. The average profit margin of the drug over the prior five-year period and the projected profit margin anticipated for such drug in the coming year; and

viii. True net typical prices charged to pharmacy benefit managers, health plans or state agencies, including the group insurance commission, and MassHealth. “True net prices” means the average reimbursement cost of the drug, net of any rebates or other payments from the manufacturer to the pharmacy benefit manager, health plan or state agency and the pharmacy benefit manager to the manufacturer. These “true net prices” shall be reported on an aggregated basis, without reference to specific pharmacy benefit managers, health plans or state agencies.

(c) The commission shall promulgate regulations to further define and enforce the provisions of this section, which may include monetary penalties of not more than $100,000 for each failure to comply with the requirements of this section.

(d) The commission with the assistance of the center shall prepare an annual report on prescription drug prices and their role in overall health care spending in the commonwealth

based on the data submitted to the commission pursuant to paragraph (b). As part of the report, the commission may include recommendations for actions to lower prescription drug costs and spending across the commonwealth while maintaining access to high quality health care. The commission's report shall be posted on the commission's website and shall be filed with 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, each year prior to the commission's annual hearings pursuant to section 8.

Section 20. (a) The commission shall annually identify, using information submitted to the commission pursuant to section 19, those critical prescription drugs that due to their cost, jeopardize the commonwealth's ability to meet the statewide health care cost growth benchmark, as established by section 9, or where the cost is excessively higher than justified taking into account the data submitted under subsection (b) of section 19. In reviewing the data and making a determination under this subsection, the commission shall review and consider all data reported to the commission and the center and determine whether the price of the prescription drug is excessively high given: (i) the prescription drug's medical benefits, (ii) the cost to develop and manufacture the prescription drug, and (iii) the prices charged by the manufacturer in other countries. The commission may also consult with non-profit organizations that study and compare the clinical effectiveness and value of prescription drugs.

SECTION 4. Notwithstanding any special or general law to the contrary, the health policy commission, in consultation with the center for health information and analysis and the department of public health, shall conduct and complete an analysis of the impact on health care costs of the use of discounts, rebates, coupons, copay waivers, patient assistance programs, product vouchers or other reduction in an individual's out-of-pocket expenses, hereinafter

referred to as “coupons”, for biological products and prescription drugs authorized under subsection (b) of section 3 of chapter 175H of the General Laws. The report shall include, but not be limited to: (i) the total number of such coupons redeemed in the commonwealth; (ii) the total value of such coupons redeemed in the commonwealth; (iii) an analysis of the types of biological products and prescription drugs for which such coupons were most frequently redeemed; (iv) a comparison of any change in utilization of generic versus brand name prescription drugs; (v) a comparison of any change in utilization of among therapeutically-equivalent brand name drugs; (vi) the effect on patient adherence to prescribed drugs; (vii) patient access to innovative therapies; (viii) an analysis of the availability of such coupons upon renewals; (ix) an analysis of the cost impact to consumers upon expiration of such coupons; (x) an analysis of the impact on commercial health insurance premiums, attributed to both employers and individuals; (xi) an analysis of the impact on any health care cost containment goals adopted by the commonwealth; (xii) an analysis of the impact on premiums associated with the group insurance commission; and (xiii) whether such coupons are remuneration that induces a referral of a medical service, thus violating health care fraud and abuse laws.

To conduct its evaluation, the commission may contract with an outside organization with expertise in the analysis of health care financing. In conducting its evaluation, the commission may require that manufacturers of biological products and prescription drugs report on the number and types of such coupons which such manufacturers have issued and which have been redeemed in the commonwealth.

The commission shall file a report of its findings with the clerks of the senate and house of representatives, the house and senate committees on ways and means and the joint committee on health care financing on or before January 1, 2020.