

## Massachusetts Legislation Proposes Cost Disclosures and Price Caps for Prescription Drugs

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April 28, 2015

The Massachusetts Legislature is currently considering Senate Bill 1048, “An Act to Promote Transparency and Cost Control of Pharmaceutical Drug Prices.” The bill, sponsored by State Senator Mark Montigny, Vice Chair of the Joint Committee on Health Care Financing, would require manufacturers of drugs included in a “critical prescription drug list” to disclose certain information relating to the price of those drugs. The bill would also authorize the Massachusetts Health Policy Commission (HPC) to cap drug prices it determines to be “significantly high.” Similar prescription drug price transparency bills have been filed in a growing number of states, including California, North Carolina, Oregon and Pennsylvania. The Massachusetts bill is notable among these other bills, however, for proposing state authority to cap prices on certain medications.

### Massachusetts Senate Bill 1048

Massachusetts Senate Bill 1048 articulates several factors that the HPC must consider in developing the critical prescription drug list. These include the cost of the drug, utilization levels, and the potential impact on the Commonwealth’s health care cost growth benchmark as established by Chapter 224 of the Acts of 2012. Senate Bill 1048, however, does not provide specific measurements or standards by which the HPC would determine if these factors are met, leaving further guidance on this topic to regulation.

For the drugs that are placed on the critical prescription drug list, manufacturers would have to disclose the following cost and price information:

- Total cost of production and approximate cost of production per dose;
- Research and development costs;
- Marketing and advertising costs;
- Prices charged to purchasers outside the United States;
- Prices charged to typical Massachusetts purchasers; and
- True net typical prices charged to prescription drug benefit managers for distribution in Massachusetts.

The bill also provides that reported information would be protected from disclosure under the Massachusetts Public Records Law. The HPC is tasked with preparing an annual report on prescription drug prices and their impact on overall health care spending, but the HPC would only be authorized to disclose aggregate data in order to protect its proprietary nature.

Senate Bill 1048 would require the HPC to identify drugs which, due to their “significantly high” cost, jeopardize the Commonwealth’s ability to meet the health care cost growth benchmark established under Chapter 224 of the Acts of 2012. Drug prices that are determined to be “significantly high” given (i) the drug’s medical benefits, (ii) the manufacturing and development costs, and (iii) the price charged by the manufacturer for the drug in other countries, are subject to a maximum allowable price cap set by the HPC for sales in Massachusetts.

### Prescription Drug Pricing Transparency Legislation Nationwide

Massachusetts Senate Bill 1048 comes in the wake of similar drug pricing disclosure legislation that has been filed in handful of state

legislatures across the country, including:

- California A.B. 463 and Oregon H.B. 3486: Requiring the disclosure of manufacturing, production, and development costs as well as profits and amount spent on patient assistance programs for drugs that cost over \$10,000 annually or per course of treatment;
- North Carolina H.B. 839: Requiring the disclosure of manufacturing, production, and development costs as well as profits and amount spent on patient assistance programs for brand medications;
- Pennsylvania H.B. 1042: Permitting a health insurance policy or government program providing prescription drug benefits not to provide coverage for prescription drugs costing \$5,000 or more annually or per course of treatment if the manufacturer has not filed a cost-transparency report.

Although none of these bills have yet been enacted, it is expected that similar legislation will be filed this year in other states.

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