Massachusetts Taxpayers Foundation

333 Washington Street | Suite 853 | Boston, MA 02108 | 617.720.1000
www.masstaxpayers.com

MTF Bulletin

July 16th, 2024

MTF Summary of S.2871
Version as reported from the Senate Committee on Ways & Means

On July 15th, Senate Bill 2871, *An Act enhancing the market review process* was released from the Senate Committee on Ways and Means (SWM). Amendments to the bill are due by July 16th with anticipated debate occurring on July 18th.

This bill is the SWM rewrite of healthcare legislation engrossed by the House (House Bill 4653) on May 16th. The SWM bill includes many of the same provisions and themes as H.4653 but differs in many notable ways. Key differences from the House bill include:

- Changes the timeframe of the health care cost benchmark from 1-year to 2-years (as opposed to 3-years in the House)
  - The benchmark would be defined as the potential Gross State Product for the two years of the cycle;
  - The Health Policy Commission (HPC) would also be required to identify an annual affordability benchmark which would be incorporated in HPC's Cost Trends Hearing and CHIA's reporting;
- Expands the HPC's Performance Improvement Plan powers
  - Allows the HPC to assess a fine not more than the amount of an entity's cost growth over the health care cost benchmark in lieu of initiating the Performance Improvement Plan (PIP) process.
- Increases oversight of pharmaceutical manufacturing companies and pharmacy benefit managers (PBMs)
  - The bill establishes an Office of Pharmaceutical Policy and Analysis within the HPC;
  - The annual Health Care Cost Trends hearing would include testimony from pharmaceutical manufacturing companies and PBMs ;
  - The Division of Insurance (DOI) is empowered to license and regulate PBMs.
- Does not create a new Division of Health Insurance
  - The bill does rename the health insurance bureau within DOI and expands the duties and considerations of the bureau.
- Directs the Division of Insurance to simplify the prior authorization process
  - The bill creates a task force to assess and make recommendations on improvements to the use of prior authorization;
  - DOI is directed to consider the recommendations of the task force in developing rules, regulations and bulletins to simplify prior authorization.
- Establishes new requirements and criteria for private equity investment in health care
  - The bill requires a maximum debt ratio for providers with private equity investment;
  - Under the language, private equity investors must submit a bond equal to one year of the provider's annual operating expenses to be recouped if the provider declares bankruptcy.
- Creates a process for licensing health care practices operated by clinicians with independent practice authority.

MTF's work of summarizing major pieces of health care legislation is funded by a grant from the Blue Cross Blue Shield of Massachusetts Foundation (Foundation) whose mission is to ensure equitable access to health care for all those in the Commonwealth who are economically, racially, culturally, or socially marginalized. The Foundation collaborates with public and private organizations to broaden health coverage and reduce barriers to care through grants, research, and policy initiatives.

- Creates limitations on the roles that management services organizations can have in a health care practice.

MTF has prepared a comprehensive and accessible summary of S.2871, which includes the following materials:

- A high-level overview of the bill, including its recent legislative history and a breakdown of notable bill sections related to health equity; and
- A detailed section-by-section excel summary of the legislation, which includes:
  - The statutory citation of each section.
  - A summary of each section.
  - Fields indicating whether or not MTF identifies the sections as related to goals of health equity, or as having a fiscal impact to the state.
  - A field indicating whether the section is materially changed from H.4653.

Legislative History

The Senate is taking up major healthcare legislation using the vehicle engrossed by the House last month. The House final version of the bill, H.4653 (titled *An Act enhancing the market review process*), was engrossed by the House 152-1 on May 16, 2024.

The process for the bill before the Senate began with the filing of *An Act enhancing the market review process* (H.1219) by Representative John Lawn (D-Watertown) at the start of this legislative session. Chair Lawn's bill was identical (aside from date changes) to a Healthcare bill engrossed by the House in the previous session. Last session's version, H.4262 (also titled *An Act enhancing the market review process*), was engrossed by the House 158-1 on November 17, 2021. The Senate did not act on the bill in the previous session.

The bill from Chair Lawn received a legislative hearing from the Joint Committee on Health Care Financing on June 20, 2023, and was reported favorably to HWM (H.4620). A redrafted version of the bill (H.4643) was reported out of HWM on May 15th and members filed amendments to the bill, which were debated before the full House on Thursday, May 16th. After debate and all the approved amendments were included, the House engrossed a final version of the bill (H.4653) on May 16th.

As noted above, the bill released from SWM differs from the House bill in a number of ways, but shares several important policy proposals and themes:

- Moving the Health Planning Council to HPC and expanding its role;
- Updating and expanding the HPC Market Impact Review Process;
- Amending the Determination of Need process to change the factors to be considered and to prohibit a DON from proceeding unless required material change notices have been provide to HPC; and
- Extending the timeframe for the health care cost benchmark.

Bill Summary

Major topics of the bill include:

- **Health Care Cost & Affordability Benchmarks** – The bill changes the existing health care cost benchmark process, replacing an annual health care cost benchmark with a two-year health care cost benchmark cycle. The new benchmark would continue to be based on potential GSP. The bill also directs HPC to establish a health care affordability benchmark.

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- **Health Care Performance Improvement Plan** – The bill overhauls the existing Performance Improvement Plan (PIP) process for health care entities exceeding the cost benchmark. The new process will allow the HPC to levy fines in lieu of PIP participation.
- **Material Change and Determination of Need Processes** – The bill overhauls the HPC's material change process to encompass a wider variety of activities. The change would also allow the HPC to recommend changes to and expand the scope of HPC's cost and market impact reviews. The DON process is also updated to change the criteria to be considered (including HPC cost and market impact reviews), change the timeline for review, and allow for DON waivers in cases where the project is designed to address a specific need for a region, population, or service line identified in the state health plan.
- **Data Collection** – the bill expands the range of data to be collected by CHIA and increases the penalties for failure to comply with data submission requirements. Additional information to be collected relates to private equity and Real Estate Investment Trust involvement, general fiscal health of providers, and drug cost, spending and utilization data. CHIA is directed to develop and maintain an inventory of health care resources in the state. Failure to comply with CHIA data requirements will be a consideration in both material change and DON proceedings.
- **Private Equity**– The bill establishes guardrails around debt levels of health providers with private equity investment and requires investors to put up a bond equal to one year of a provider's operating costs to be recouped in the event of provider bankruptcy or if the firm does not comply with HPC oversight. The bill also includes private equity firms within the scope of review of the HPC Cost Trends Hearing and for CHIA data collection. The bill also includes investment in providers by private equity within the scope of transactions requiring an HPC material change notice.
- **Pharmaceuticals and PBMs** – The bill includes pharmaceutical manufacturers and Pharmacy Benefit Managers (PBMs) within CHIA data collection requirements and creates a new office at the HPC dedicated to drug access and cost issues. Pharmaceutical manufacturers and PBMs would be assessed to contribute to appropriate costs at the HPC and CHIA.
- **Prior Authorization** – The bill directs the Division of Insurance to simplify prior authorization procedures through regulation and rule, with those simplifications to be informed by the recommendations of a prior authorization task force created in the bill.

Health Equity

For the purpose of this table, a health equity-related section includes provisions that explicitly empower a state agency to collect information, assess implications, or take action related to health equity.

Bill Section	Description
9	Adds definitions (among others) for 'health disparities' and 'health equity' to the HPC statute.
18	Requires the HPC Office for Pharmaceutical Policy and Analysis to issue reports on topics of relevance including access to orphan drugs for racially and ethnically diverse populations.
25	Adds efforts to "advance health equity" to the categories of proposals eligible for funding through the Healthcare Payment Reform Fund.
31	Includes negative impacts of a material change on at-risk and underserved populations as one of the criteria for HPC to be able to make recommendations to address those negative impacts and includes those same populations in the list of topics within the scope of a cost and market impact review.

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32	Requires State Health Plan recommendations to reflect goals related to the advancement of goals to improve health equity and address health disparities. Also includes services or regions with access barriers for vulnerable populations as one of the potential topics for focused assessment done as part of the HPC health plan process.
42	Adds definitions (among others) for 'health disparities' and 'health equity' to the CHIA statute.
49	Adds a person with experience in health equity advocacy to the CHIA Oversight Council.
67	Requires quality and safety measures that incorporate health disparities to be used in CHIA's development of the standard quality measure set.
80	Enumerates enhancing health equity as a charge of the Health Insurance Bureau within DOI.
85	Amends the DPH DON process and the 6 guiding principles in making the decision to include "considerations of health equity."
86	Allows DPH to create a DON waiver process. One of the allowable reasons for a waiver is a project that will address lack of supply for a specific population.
110	Creates a task force to study and make recommendations to improve primary care access, delivery, and financial stability. The task force's recommendations, in part, will include an assessment of health equity impacts.

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