



Joint Committee on Health Care Financing
October 13, 2015
Testimony of Attorney General Maura Healey

Good morning, Chairman Welch, Chairman Sánchez and Members of the Committee.

I am here to express my strong support for House Bill 3678, An Act Relative to Protecting Health Care Consumers.

I am pleased to be here today with House Majority Leader Ron Mariano, the lead sponsor and my partner in filing this legislation.

Leader Mariano has been at the forefront of our state's efforts to expand access and control rising health care prices. It is a privilege to be with him today.

This is the first bill I filed as Attorney General.

We filed it because we are in a pivotal moment for our health care system.

Last week, our office presented the findings of our most recent Cost Containment Report to the Health Policy Commission at the annual Cost Trends Hearing.

Our report shows that there continue to be wide disparities in how much providers are paid for similar services, not explained by differences in quality. Additionally, patients continue to use higher cost providers, ultimately driving up our health care costs.

As a result, how price increases are distributed under the 3.6% benchmark raises serious concerns.

I don't need to explain to you the negatives consequences these cost trends have for families, businesses, and for the state.

We are all consumers of health care and higher prices crowd out a lot of other priorities.

Fortunately, the Legislature has recognized this problem and taken several important steps over the years to bring costs under control.

In 2012, you created the Health Policy Commission and established a robust system of cost containment to collect data, gather expert voices, review health care trends and analyze significant market changes.

One thing that's clear is that this is a time of increased consolidation.

We know that some consolidations are good for consumers. They can improve efficiency and quality.

But we also know that some mergers lead to even more dominant players, and push prices even higher, without delivering better care to patients.

When that happens, no one wins. Affordable health care for every family becomes that much harder to achieve. Remember, this whole part of being affordable is being accessible so people can use it.

Since 2012, the HPC has been on the front lines, taking a hard look at reviewing proposed mergers and other transactions.

When providers want to merge or otherwise align with one another, they must notify the HPC. If the HPC finds that the proposed transaction is likely to have a significant impact on health care costs or market functioning, the HPC engages in a “Cost and Market Impact Review.”

This review looks at the impact of the proposed transaction on market position, prices, and spending.

If the HPC’s Cost and Market Impact Review concludes that a provider will have a 1) dominant market share, 2) will charge materially higher prices and 3) will have higher total medical expenses, then the review is referred to the Attorney General’s Office.

Here’s what this still does – it says that these three factors, if all met, can establish a 93A claim for unfair methods of competition. And the Attorney General’s Office can take the HPC’s report to court to file an action to stop these transactions from proceeding. It also says while the legal action is pending, the transaction can’t close.

Our bill is a simple, common sense, and important clarification to the existing law.

It says that the Attorney General’s Office can use the HPC’s findings in its Cost and Market Impact Review as a basis to file a 93A action in court to stop the proposed transaction from proceeding.

It does not change the way the HPC develops reports OR alter the narrow conditions under which a report is referred to our office.

But, if we do move to stop a transaction, that HPC report will create a rebuttable presumption in support of our case. The provider would of course be allowed to present testimony in court to challenge the HPC’s findings.

Leader Mariano and I believe this modest update clarifies what the Legislature intended in 2012, to align the work of the Health Policy Commission and the Attorney General’s Office, to better protect consumers and oppose rising health care costs.

Since we filed this legislation back in April, we've heard from a wide range of groups supporting this law. And some of them might surprise you.

I'm proud to have the backing of some of our state's largest and prominent health care providers, including Lahey Health, Steward Health Care, Tufts Medical Center, the Massachusetts Council of Community Hospitals, and the Beth Israel Deaconess Medical Center.

And we've earned the support of the Massachusetts Association of Health Plans and individual insurance companies like Harvard Pilgrim Health Care.

The providers and insurers are supporting this bill because they want a level playing field to compete. They know that health care providers, insurers, and consumers alike need government partners with clear tools to help maintain access and affordability.

We've earned support from business groups like the National Federation of Independent Businesses and the Retailers Association of Massachusetts.

Because they know that lowering health care costs for businesses means listening to the experts we have chosen to oversee our health care market.

We've earned the support of health care workers, like 1199 SEIU, because market dominance creates problems for workers and patients.

And this bill was featured on the legislative agenda for the Greater Boston Interfaith Organization, GBIO, because a robust and dynamic health care marketplace, with appropriate controls, will create stronger and healthier communities.

This is a priority for me and my office and I want to thank all of those groups for sharing their support and for their testimony.

I want to thank Leader Mariano once again for his partnership

Chairman Sanchez, Chairman Welch and Members of the Committee, thank you again for the opportunity to speak on this issue.

I look forward to taking your questions.