The Massachusetts Medical Society (MMS) wishes to be recorded in support of H.1311 and S.756, legislation that would implement new protections for patients when they are required to use “Step Therapy” or “Fail First” protocols and would create a process for a patient to appeal a required step therapy protocol.

The MMS is a professional association of over 25,000 physicians, residents, and medical students across all clinical disciplines, organizations, and practice settings. The Medical Society is committed to advocating on behalf of patients, for a better health care system, and on behalf of physicians, to help them provide the best care possible. The Medical Society supports policies that enhance and protect the physician-patient relationship and preserve physicians’ ability to make clinical decisions for the benefit of patients. As physicians, our primary ethical obligation is to promote the well-being of our patients, which includes advocating to remove medically unnecessary barriers to care that harm patient health and well-being.

Under fail first policies, also known as “step therapy”, patients in the Commonwealth can currently be required to try and fail one or more lower-priced medications specified by their insurance company – not their physician or health care provider – to treat their health condition. This one-size-fits-all approach is an imprudent attempt to control health care costs and it interferes with the physician-patient relationship, undermining the medical expertise of physicians while failing to adequately account for the characteristics and needs of individual patients. Comorbid conditions, concurrent medications, and demographic factors all impact a medication’s effectiveness and side effects and are not taken properly into account under step therapy policies.

The step therapy process also wastes critical time in treatment – which many patients simply cannot afford to lose – diminishes the quality of care provided, and ultimately puts patients at risk. For example, fail first policies that result in forced drug switching, treatment gaps, and cessation of effective therapy are dangerous to patients because of the potential for disease flares, negative immune responses, and other adverse effects. A MMS member-physician recently reached out, exasperated, to convey her frustration at caring for a patient with psoriasis who, because of clinical complexities, was not successful on a less expensive therapy and ultimately found significant benefit from a new drug on the market. Upon switching health insurance, the patient’s new insurer required her to go back onto the old, ineffective medication for three months before being approved for the medication that she and her physician knew would be successful. While this fails to save costs and clearly added to the administrative burden of the care team, the paramount tragedy was the months of pain and lack of function that this patient was unnecessarily forced to endure. Fail first policies negatively impact patients dealing with a wide range of medical conditions, including cancer, diabetes, inflammatory bowel diseases, psoriatic and rheumatoid arthritis, mental health, epilepsy, multiple sclerosis, autoimmune diseases, and more. As such, these fail first policies also have a disparate impact on
patients of color, who are disproportionately impacted by certain chronic conditions, the treatment of which are often subject to step therapy.

H.1311 and S.756 would implement common sense safeguards to remove unnecessary barriers and will provide critical patient protections and make progress toward health equity. Specifically, this legislation will:

- Require health insurers to use evidence-based and peer reviewed clinical review criteria that considers the needs of the patients.
- Provide for an expeditious, transparent exceptions and appeals process for health care patients and providers.
- Establish circumstances for the prescribing health care provider to override “fail first” protocols when medically appropriate and in the best interest of the patient.

These important provisions would expedite the treatment process for patients who cannot afford to lose valuable time to adhere to insurance policies’ procedures and would allow physicians, who are most in-tune with the patients’ specific needs, to make the ultimate and best decision on the best possible course of medical treatment. Notably, this legislation would not prohibit step therapy, nor would it preclude health plans from requiring prior authorization before covering a prescribed medication.

This legislation is broadly supported by a broad range of health care providers and associations. The MMS urges the Health Care Financing Committee to act favorably on H.1311 and S.756 and bring the Commonwealth one step closer to joining the 32 other states that have codified these critical patient safety protections into law.