

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Sean Curran

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 passage of the accompanying bill:

An Act improving patients' access to timely compensation.

PETITION OF:

NAME:

Sean Curran

DISTRICT/ADDRESS:

9th Hampden

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT IMPROVING PATIENTS' ACCESS TO TIMELY COMPENSATION.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1.

2 Chapter 231 of the General Laws is hereby amended by adding after section 60K the following new
3 section:

4 Section 60L.

5 (a). Except as provided in this section a person shall not commence an action against a provider of
6 health care as defined in paragraph 7 of section 60 B of chapter 231 as appearing in the 2004 official
7 edition of the general laws unless the person has given the health care provider written notice under
8 this section of not less than 182 days notice before the action is commenced.

9

10 (b). The notice of intent to file a claim required under (a) shall be mailed to the last known professional
11 business address or residential address of the health care provider who is the subject of the claim.

12

13 (c). The 182 day notice period in Section 1 is shortened to 91 days if all of the following conditions exist:

14

15 (1) The claimant has previously filed the 182 day notice required in (a) against another health
16 care provider involved in the claim.

17 (2) The 182 day notice period has expired as to the health care providers described in (1).

18 (3) The claimant has filed a complaint and commenced an action alleging medical malpractice
19 against one or more of the health care providers described in subsection (1).

20 (4) The claimant did not identify and could not have reasonably have identified a health care
21 provider to which notice must be sent under (a) as a potential party to the action before filing
22 the complaint.

23

24 (d) The notice given to a health care provider under this section shall contain a statement of at least all of
25 the following:

26

27 (1) The factual basis for the claim.

28 (2) The applicable standard of care alleged by the claimant.

29 (3) The manner in which it is claimed that the applicable standard of care was breached by the
30 health care provider.

31 (4) The alleged action that should have been taken to achieve compliance with the alleged
32 standard of care.

33 (5) The manner in which it is alleged the breach of the standard of care was the proximate cause
34 of the injury claimed in the notice.

35 (6) The names of all health care providers the claimant is notifying under this section in relation
36 to the claim.

37

38 (e). 56 days after giving notice under this section, the claimant shall allow the health care provider
39 receiving the notice access to all of the medical records related to the claim that are in the claimant's
40 control, and shall furnish release for any medical records related to the claim that are not in the
41 claimant's control, but of which the claimant has knowledge. This subsection does not restrict a health
42 care provider receiving notice under this section from communicating with other health care providers
43 and acquiring medical records as permitted under any other provision of law. This subsection does not
44 restrict a patient's right of access to his or her medical records under any other provision of law.

45

46 Within 154 days after receipt of notice under this section, the health care provider against whom the
47 claim is made shall furnish to the claimant or his or her authorized representative a written response
48 that contains a statement of each of the following:

49

50 (1) The factual basis for the defense to the claim.

51 (2) The standard of care that the health care provider claims to be applicable to the action and
52 that the health care provider complied with that standard.

53 (3) The manner in which it is claimed by the health care provider that there was compliance with
54 the applicable standard of care.

55 (4) The manner in which the health care provider contends that the alleged negligence of the
56 health care provider was not the proximate cause of the claimant's alleged injury or alleged
57 damage.

58

59 (f). If the claimant does not receive the written response required under Section 7 within the required
60 154 day time period, the claimant may commence an action alleging medical malpractice upon the
61 expiration of the 154 day period.

62

63 (g) If at any time during the applicable notice period under this section a health care provider receiving
64 notice under this section informs the claimant in writing that the health care provider does not intend to
65 settle the claim s within the applicable notice period, the claimant may commence an action alleging
66 medical malpractice against the health care provider, so long as the claim is not barred by the statute of
67 limitations.

68

69 SECTION 2.

70 The General Laws are hereby amended by inserting after section 79K of chapter 233 the following new
71 section:

72 Section 79L

73

74 As used in this section the following terms shall have the following meaning:

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76 (1)“Health Care Provider”, means any of the following health care professionals licensed pursuant to
77 chapter 112: a physician, podiatrist, physical therapist, occupational therapist, dentist, optometrist,
78 nurse, nurse practitioner, chiropractor, psychologist, independent clinical social worker, speech-
79 language pathologist, audiologist, marriage and family therapist and a mental health counselor. The
80 term shall also include any corporation, professional corporation, partnership, limited liability company,
81 limited liability partnership, authority, or other entity comprised of such health care providers.

82

83 “Facility”, a hospital, clinic or nursing home licensed pursuant to chapter 111 or a home health agency.
84 The term shall also include any corporation, professional corporation, partnership, limited liability
85 company, limited liability partnership, authority, or other entity comprised of such facilities.

86

87 “Unanticipated outcome” means the outcome of a medical treatment or procedure, whether or not
88 resulting from an intentional act, that differs from an intended result of such medical treatment or
89 procedure.

90

91 (2) In any claim, complaint or civil action brought by or on behalf of a patient allegedly experiencing an
92 unanticipated outcome of medical care, any and all statements, affirmations, gestures, activities or
93 conduct expressing benevolence, regret, apology, sympathy, commiseration, condolence, compassion,

94 mistake, error, or a general sense of concern which are made by a health care provider, facility or an
95 employee or agent of a health care provider or facility, to the patient, a relative of the patient, or a
96 representative of the patient and which relate to the unanticipated outcome shall be inadmissible as
97 evidence in any judicial or administrative proceeding and shall not constitute an admission of liability or
98 an admission against interest.