

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Mr. Montigny

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 Establishing Accountability for Managed Care Organizations.

PETITION OF:

NAME:

Mr. Montigny

DISTRICT/ADDRESS:

Second Bristol and Plymouth

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT ESTABLISHING ACCOUNTABILITY FOR MANAGED CARE ORGANIZATIONS.

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. Chapter 231 of the General Laws, as appearing in the 2002 official edition, is
2 hereby amended by inserting after section 85AA the following three sections:-

3 Section 85BB. As used in this section and sections 85CC and 85DD the following words shall
4 have the following meanings:

5 "Carrier", as defined in section 1 of chapter 176O.

6 "Enrollee", an individual who is enrolled in a health care plan, including covered dependents.

7 "Health care plan", any plan whereby any person undertakes to provide, arrange for, pay for, or
8 reimburse any part of the cost of any health care services.

9 "Health care treatment decision", a determination made by a carrier or managed care entity for a
10 health care plan that affects the quality of the diagnosis, care, or treatment provided to the plan's
11 insureds or enrollees.

12 “Insured”, an enrollee, covered person, insured, member, policyholder or subscriber of a carrier
13 or managed care entity, including covered dependents and including an individual whose
14 eligibility as an insured of a carrier or managed care entity is in dispute or under review.

15 "Managed care entity", any entity which delivers, administers, or assumes risk for health care
16 services with systems or techniques to control or influence the quality, accessibility, utilization,
17 or costs and prices of such services to a defined enrollee population.

18 Section 85CC.

19 (a) A carrier or managed care entity for a health care plan shall exercise ordinary care when
20 making health care treatment decisions and shall be liable for damages for harm to an insured or
21 enrollee proximately caused by its failure to exercise such ordinary care.

22 (b) A carrier or managed care entity for a health care plan shall be liable for damages for harm to
23 an insured or enrollee proximately caused by the health care treatment decisions made by its
24 employees, agents, apparent agents or representatives who are acting on its behalf and over
25 whom it has the right to exercise influence or control or has actually exercised influence or
26 control which results in the failure to exercise ordinary care.

27 (c) It shall be a defense to any action asserted against a carrier or managed care entity for a
28 health care plan that:

29 (1) neither the carrier or managed care entity, nor any employee, agent, apparent agent or
30 representative for whose conduct such carrier or managed care entity is liable under subsection

31 (b) controlled, influenced, or participated in the health care treatment decision; and

32 (2) a carrier or managed care entity did not deny or delay payment for any treatment prescribed
33 or recommended by a provider to the insured or enrollee.

34 (d) The standards in subsections (a) and (b) shall not create an obligation on the part of a carrier
35 or managed care entity to provide to an insured or enrollee treatment that is not covered by the
36 health care plan of the insured or enrollee.

37 (e) This chapter does not create any liability on the part of an employer, or employer group
38 purchasing organization, that purchases coverage or assumes risk on behalf of its employees, a
39 pharmacy licensed by the board of registration in pharmacy, or an organization of health care
40 providers that contracts with entities licensed or approved by the division of insurance to assume
41 risk for the care of a defined enrollee population or to provide health care services with systems
42 or techniques to control or influence the quality, accessibility, utilization or cost of such services
43 if such organization is not required to be licensed by the division of insurance and such
44 organization's health care providers may otherwise be subject to a malpractice action pursuant to
45 sections 60B to 60I, inclusive.

46 (f) Nothing in sections 85BB to 85DD, inclusive, shall be construed to diminish the obligations
47 of carriers or managed care entities as they existed prior to the effective date of said sections,
48 including but not limited to, the obligations of principals for the acts of their agents.

49 Section 85DD. (a) The provisions of section 85K shall not apply to claims against carriers and
50 managed care entities arising under section 85CC.

51 (b) All claims filed pursuant to section 85CC shall be subject to sections 60B to 60I, inclusive.