

**SENATE . . . . . No.**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

**Moore, Richard (SEN)**

*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 to Define the Use of Observation Services**

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Moore, Richard (SEN)	Worcester and Norfolk

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. S00672 OF.]

**The Commonwealth of Massachusetts**

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**In the Year Two Thousand and Nine**

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**AN ACT TO DEFINE THE USE OF OBSERVATION SERVICES.**

*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. Section 8 of Chapter 118E of the General Laws, as appearing in the 2006  
2 official edition, is hereby amended by inserting after the definition of “Medical benefits” the  
3 following new definition:

4           “Observation Services”, health care services furnished on a provider’s premises, including the  
5 use of a bed and periodic monitoring by the provider’s nursing or other provider staff, which are  
6 reasonable and necessary to evaluate a patient’s condition or determine the need for a possible  
7 admission to the hospital as an inpatient. These services are covered only when ordered by the  
8 treating provider with clinical privileges as authorized by the hospital staff bylaws.

9           SECTION 2. Section 12 of chapter 118E of the General Laws, as so appearing, is further  
10 amended by inserting at the end thereof the following new paragraph:

11 The division and its contractors shall classify a beneficiary as requiring or receiving observation  
12 services based on the medical judgment of the treating health care provider after due  
13 consideration of the beneficiary's presenting signs and symptoms. The treating health care  
14 provider may authorize that observation services be provided up to 24 hours in circumstances  
15 when the beneficiary's diagnosis and treatment course remains unclear and requires only  
16 continued monitoring or continued diagnostic assessment by clinical staff; provided however,  
17 that the treating health care provider may authorize an inpatient stay within 24 hours based on  
18 the diagnosis. For services extending beyond 24 hours in duration, should the diagnosis and the  
19 treatment course remain undetermined or the beneficiary require diagnostic testing and/or active  
20 treatment of his condition, that beneficiary shall be admitted to the facility as an inpatient. If  
21 such health care provider's opinion, based on this evaluation, is that the beneficiary requires less  
22 than 24 hours in a facility and does not require inpatient level of care during this period, such  
23 beneficiary shall be classified as outpatient observation. Notwithstanding the provisions of this  
24 section, observation services shall not extend beyond 24 hours in duration under any  
25 circumstance. The division and its contractors shall not retroactively reclassify the beneficiary  
26 from inpatient to observation, for either a portion or the entire stay, after the determination by the  
27 treating health care provider that the beneficiary shall be admitted as an inpatient.

28 SECTION 3. Section 1 of chapter 176O of the General Laws, as so appearing, is hereby  
29 amended by inserting after the definition of "network" the following new definition:

30 "Observation Services", health care services furnished on a provider's premises, including the  
31 use of a bed and periodic monitoring by the provider's nursing or other provider staff, which are  
32 reasonable and necessary to evaluate a patient's condition or determine the need for a possible

33 admission to the hospital as an inpatient. These services are covered only when ordered by the  
34 treating provider with clinical privileges as authorized by the hospital staff bylaws.

35 SECTION 4. Section 12 of chapter 176O, as so appearing, is further amended by inserting the  
36 following new subsection (f):

37 (f) Any classification of an insured as requiring or receiving observation services shall be based  
38 on the medical judgment of the treating health care provider after due consideration of the  
39 insured's presenting signs and symptoms. The treating health care provider may authorize that  
40 observation services be provided up to 24 hours in circumstances when the insured's diagnosis  
41 and treatment course remains unclear and requires only continued monitoring or continued  
42 diagnostic assessment by clinical staff; provided however, that the treating health care provider  
43 may authorize an inpatient stay within 24 hours based on the diagnosis. For services extending  
44 beyond 24 hours in duration, should the diagnosis and the treatment course remain undetermined  
45 or the insured require diagnostic testing and/or active treatment of his condition, that insured  
46 shall be admitted to the facility as an inpatient. If such health care provider's opinion, based on  
47 this evaluation, is that the insured requires less than 24 hours in a facility and does not require  
48 inpatient level of care during this period, such insured shall be classified as outpatient  
49 observation. Notwithstanding the provisions of this section, observation services shall not extend  
50 beyond 24 hours in duration under any circumstance. The carrier and its contractors shall not  
51 retroactively reclassify the insured from inpatient to observation, for either a portion or the entire  
52 stay, after the determination by the treating health care provider that the insured shall be admitted  
53 as an inpatient.

54 SECTION 5. The Commissioner of Insurance and the Office of Medicaid shall promulgate  
55 regulations no later than 90 days following the effective date of this Act. The regulations as set  
56 forth, shall be effective in contracts between carriers and health care providers that are entered  
57 into, renewed, or amended on or after the effective date of this Act.